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H. R. 239.

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

OF THE

HOUSE OF REPRESENTATIVES

ON

H. R. 239,

RELATING TO LIABILITY OF COMMON CARRIERS BY RAILROADS IN THE DISTRICT OF COLUMBIA AND TERRITORIES AND COMMON CARRIERS BY RAILROADS ENGAGED IN COMMERCE BETWEEN THE STATES AND BETWEEN THE STATES AND FOREIGN NATIONS TO THEIR EMPLOYEES.

COMMITTEE ON THE JUDICIARY,
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FIFTY-NINTH CONGRESS:

JOHN J. JENKINS, Wisconsin, *Chairman.*
RICHARD WAYNE PARKER, New Jersey.
DE ALVA S. ALEXANDER, New York.
CHARLES E. LITTLEFIELD, Maine.
ROBERT M. NEVIN, Ohio.
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ROBERT L. HENRY, Texas.
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WILLIAM G. BRANTLEY, Georgia.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
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LIABILITY OF COMMON CARRIERS ETC.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Wednesday, February 28, 1906.

The committee met at 10.30 o'clock a. m., Hon. John J. Jenkins (chairman) in the chair.

The CHAIRMAN. The committee will be in order. Mr. Fuller is present this morning. I understand that you represent those in favor of this legislation, Mr. Fuller, and that you desire to be heard first this morning?

Mr. FULLER. I do, Mr. Chairman.

The CHAIRMAN. Will you kindly give the committee the numbers of those bills?

Mr. FULLER. The employers' liability bill is House bill No. 239, which is known as the Bates employers' liability bill.

The CHAIRMAN. Has not Mr. Bates introduced another one later?

Mr. FULLER. He did, but it is the same bill identically.

The CHAIRMAN. What is the number of that?

Mr. FULLER. It is 13101, I believe; but I know it is the same bill.

STATEMENT OF MR. H. R. FULLER, OF BEAVER FALLS, PA.

The CHAIRMAN. Please state whom you represent.

Mr. FULLER. I represent the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen, Order of Railway Conductors, and the Brotherhood of Railroad Trainmen. I have credentials signed by the chief executives of all these organizations, authorizing me to represent them in all matters of legislation here in Congress, and I will be glad to give them to the reporter if the committee so desires.

Mr. Chairman, as the representative of 230,000 railroad employees, I respectfully ask the honorable committee for the favorable consideration of House bill No. 239. I have here two or three amendments that we would suggest to the committee. On page 1, line 10, after the word "his," strike out the words "heirs at law." That is at the end of line 10, the last word in line 10 and the first two words in line 11. Strike out those three words and insert in lieu thereof "personal representative."

I will say that both of these terms were under consideration at the time we prepared this bill, and that term got into the bill by mistake. It should have been "personal representative."

On page 2, line 6, after the word "slight," insert the words "and that of the employer was gross." It would make that read then,

" Where his contributory negligence was slight, and that of the employer was gross in comparison."

On page 2, line 7, after the word " comparison," strike out the rest of that line and insert in lieu thereof the following:

but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be submitted to the jury.

We believe that when you compare this proposed legislation with the laws of the great industrial countries of the world on this subject, as well as with those of a large number of our own States, you will agree with us when we say we are only asking for something that can not be classed as above that which is moderate. Indeed, it can be truthfully called mild legislation.

Mr. Chairman, the object of the advocates of this bill is to give the employee greater rights in the courts by lifting from his shoulders the financial burden of those accidents incident to industrial employment over which he has no control, and which, in view of the present system of operating great industrial institutions, equity demands that he should not be held responsible for; and, after having given him a standing in court, to provide that these rights shall not be taken away from him through mere contracts of employment, contracts which by force of circumstances he is required to sign in order to make a living, or by the signing of contracts of insurance, relief benefits, and so forth, and especially when he and his fellow-employees furnish over 80 per cent of the money which goes to make up the fund from which these benefits are drawn; contracts which, if not legally, are morally against public policy and should be declared void.

Section 1 of this bill provides:

That every common carrier by railroad engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any Territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his heirs at law, for all damages which may result from the negligence or mismanagement of any of its officers, agents, or employees, or by reason of any defect or insufficiency in its cars, engines, appliances, machinery, track, roadbed, ways, or works.

Under a fair application of the common law as it now exists the employer is already liable in most of the cases mentioned in this section; consequently his increased liability under its provisions is not nearly as great as one might think upon first reading.

For instance, it is my understanding that the employer is liable under the common law for injuries received by an employee through the negligence of his officers and agents, or by reason of any defect or insufficiency in his cars, engines, appliances, machinery, track, roadbed, ways, or works. Therefore, so far as those provisions of the bill are concerned, we are only asking that you enact into statutory law that which is now the common law.

This conceded, and I believe it will be by most lawyers, the only provision of this section which it can be successfully argued means new legislation is the provision which makes the employer liable for the negligence or mismanagement of " any of his employees."

In view of the fact that he is already liable under common law for the negligence of his officers and agents, the words " any employees," as they appear in this section, can only be held to apply to fellow-servants.

This brings us to the discussion of the fellow-servant doctrine, which was for so many years in England, and is now in the United States, the cause of great contention in industrial employment, and it is of the application of this doctrine by our courts, especially our Federal courts and those in the States which are governed by the common law, that the laboring classes complain, as such application works great injustice to employees and deprives them of the remedies now guaranteed to third persons, thereby denying them equal rights before the law.

Not being a lawyer, I can not hope to successfully discuss this matter from a legal standpoint. I will, however, endeavor to give to you what I have found to be the history of this subject, and how it is viewed from the employees' standpoint.

In ancient Judea, Greece, and Rome we find that the master was held to a strict responsibility for the acts of his servant. The Roman law made the master responsible for the negligence of his servant and child, and compelled him to make compensation for their negligence. One of the outgrowths of this principle is the holding of the master responsible for injury received through the negligence of his servant. The first recorded case of this kind found was in England, under Lord Holt, chief justice of the King's Bench at the close of the English revolution. No record has been found of any exception to this rule until the year 1837, when an English judge (Lord Abinger), in the following case of Priestly *v.* Fowler, departed from the old rule, which had stood for centuries.

A butcher sent one of his men on a wagon which had been loaded by another employee, but loaded too heavily. The wagon broke down and the man's thigh was broken. His lordship decided that the butcher was not liable for the injury. The reasoning on which this decision was given may well be quoted:

> If the master be liable to the servant in this action, the principle of that liability will be found to carry us to an alarming extent. He who is responsible by his general duty, or by the terms of his contract, for all of the consequences of negligence in a matter in which he is the principal is responsible for the negligence of all his inferior agents. If the owner of the carriage is, therefore, responsible for the sufficiency of his carriage to his servant, he is responsible for the negligence of his coach maker or his harness maker or his coachman. The footman, therefore, who rides behind the carriage, may have an action against his master for a defect in the carriage, owing to the negligence of the coach maker, or for a defect in the harness arising from negligence of the harness maker, or for drunkenness, negligence, or want of skill in the coachman; nor is there any reason why the principle should not, if applicable in this class of cases, extend to many others. The master, for example, would be liable to the servant for the negligence of the chambermaid for putting him in a damp bed; for that of the upholsterer for sending in a crazy bedstead; for the negligence of the cook in not properly cleaning the copper vessels used in the kitchen; of the butcher in supplying the family with meat of a quality injurious to the health; of the builder for a defect in the foundation of the house, whereby it fell and injured both the master and the servant by the ruins.
>
> The inconvenience, not to say the absurdity, of these consequences affords a sufficient argument against the application of this principle to the present case. But, in truth, the mere relation of the master and the servant can never imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do of himself. He is no doubt bound to provide

for the safety of his servant in the course of his employment to the best of his judgment, information, and belief. The servant is not bound to risk his safety in the service of the master, and may, if he thinks fit, decline any service in which he reasonably apprehends injury to himself; and in most of the cases in which danger may be incurred, if not in all, he is just as likely to be acquainted with the probability and extent of it as his master.

While this departure was made without, as is thought by able men, a good reason, and made, too, by one who was not a distinguished jurist, and should not have been followed as a precedent, yet it seems that the courts of the United States, as can be shown in many of their opinions, eagerly sought this precedent and, seemingly with much earnestness, have been applying it vigorously from that time until the present day, when our system of industry has, I might say, been revolutionized.

The decision of Lord Abinger came at about the beginning of the centralization of large wealth and capital in great manufacturing and mechanical operations, and at the time the principal railroads of England and America were in their infancy, and no man or set of men were wise enough to foresee the great development that was to take place nor to contemplate the importance of such a rule when applied to the new conditions of employment which must follow such development.

Modern conditions, especially in the operating of railroads, are as dissimilar to those which existed when this doctrine was enunciated that the common-law rule should now, and even long ago, have been changed by statute.

When the common-law doctrine respecting this question was enunciated there were no large factories in which great numbers of men were employed, and in places where several men were employed the tools were few and the machinery simple and wholly operated by hand or power furnished by the working of animals. There was no swift-moving machinery with numerous parts concealed. Everything was done by slow, easy stages, and each employee had not only the opportunity to get thoroughly acquainted with the tools in use, but also with his fellow-employees, their habits of carefulness, and the like. If any defect existed or occurred in the simple, crude tools or machinery it was easily discovered or, if not, the slowness of the operation of the business was generally sufficient to prevent any severe personal injuries to employees.

At that time many of the fastest-moving vehicles used in passenger and freight traffic were drawn by oxen or horses. At such a time and under such conditions the common-law doctrine relating to personal injuries might have been appropriate and just; but since then factories are operated by high-speed, complicated, and dangerous machinery, the parts of which are largely hidden from view. The employees are assigned to special places, and so engrossing are their duties that they have little or no time to inspect the machine they are operating, the surroundings, nor to get acquainted with the habits of carefulness and caution of their fellow-employees.

Of course this bill does not apply to factories, but I refer to them for the purpose of illustrating how inapplicable and unjust the common-law doctrine is when applied to modern conditions.

On railroads all of the work of operating trains is done by swift and dangerous agencies and methods. In order to make the property

more valuable companies require and insist that these methods be adopted and used. The work is pursued both by day and by night. The service is so exacting that it usually requires the undivided attention and a high quality of energy from each employee to perform well and satisfactorily the duty assigned to him, and thus it is a physical impossibility for him to inspect the ways, works, and machinery or become acquainted with the habits of his coemployees, who, perhaps, occupy places or who are moving along at different points over miles and miles of railroad. The employee himself is not only required to go over miles and miles of track, often upon different divisions, but it is not unusual for him to be assigned with new or strange employees upon each trip.

These conditions prevent him from learning of the habits of carefulness or lack of carefulness of his coemployees, and also prevent his habits of carefulness and prudence from influencing such coemployees. This being true, the foundation of the common-law doctrine relating to personal injuries is swept away, and therefore to apply it would be without reason or logic and must necessarily work a gross injustice to the injured employee whose surroundings are wholly dissimilar from those that surrounded employees when the doctrine was first enunciated and applied.

Railroad trains are handled and run with such expedition and speed the very sight of which dazzles the eye and confuses the mind of those outside the service, and surely under such circumstances a progressing civilization should awaken to the fact that a remedy should be found for present conditions which would more nearly afford justice to the men engaged in this all-important business of interstate traffic, which has so materially promoted the happiness and prosperity of the nation.

On a railroad the men have no choice in the selecting or keeping in the service of their fellow-employees; they have no choice of the selection of machinery or appliances, but over each of these matters the railroad company has full and complete control, and therefore when the employee is injured it is certainly only reasonable and just that the employer who is being benefited by his service should reasonably respond in damage to him on account of the injury.

As an illustration of the injustice of the rule when applied to a modern railroad, let us say, Mr. Chairman, that you and I go down here to the Pennsylvania Railroad; you pay $4 for a ride from here to Philadelphia; I hire out to that company as a conductor, and for my services between Washington and Philadelphia that company pays me $4. Neither you nor I make any agreement with the railroad company to release it from any liability for injury. We board one of the fast passenger trains, you as a passenger and I as a conductor. Things go along nicely, the train is running along at a 60-mile rate, you are at ease enjoying your ride, while I am busily engaged collecting tickets and looking after the comforts of my passengers, when suddenly the train rounds a curve and enters an open switch which has been carelessly left open by some trainman whose negligence neither you nor I were in a position to know of or guard against; our train crashes into another train, and we are both injured. For your injury you could go into the courts and recover thousands of dollars, but the court says to me: "The cause of your injury was due to the negligence of a fellow-servant, and you can not

recover." And this is not an extreme case. Such accidents as this happen quite often on a railroad.

I did not know that the man who left that switch open was a careless man. I did not even know him or know that he was employed upon the road. And even had I known him and knew he was careless, I was in no position to guard against his carelessness.

I could not have said to my engineer upon leaving Washington, "A certain fellow is working on this division of the railroad, and I think he is a careless kind of a fellow, and I am a little afraid of him. Now, I know that he is working here, but I do not know that he is out on the road; he may be at home in bed; it may be this is his time between trips; but he is liable to be out on the road and I do not know where you will find him if he is out on the road, but in order to make ourselves safe you just run this engine and pull this train with sufficient speed only so that if we do meet that man and he leaves a switch open no damage will be done." It is ridiculous, Mr. Chairman, if I may be excused for using that word, to expect a railroad employee to know all of the habits of those men who work upon the same line of railroad with him. He can not do it, and if he does know it the machinery of the railroad is like a clock, one wheel is dependent upon another, and it is assumed that everybody will do their duty, and no man would be kept in the service for twenty-four hours that would run his train between here and Philadelphia at the rate of 5 or 6 miles an hour because he was afraid that some negligent employee that he knew was a little careless might leave a switch open.

Can a fair comparison be made between a case of this kind and two servants of a butcher, who nearly every hour of the day are employed side by side and know each other's shortcomings, and consequently are in a position to guard against them? If it is justice to compensate you, why, I ask, is it not right that I should also be given the right to recover when the circumstances are the same?

I repeat, if there was any justice in the rule laid down by Lord Abinger at the time it was made it disappears, in my mind, when we seek to apply it to modern institutions and their employees. This fact is evidenced by the action of the English lawmakers when in 1880 they passed the English employer's liability act and in 1897 the workman's compensation act.

Mr. ALEXANDER. You see, in line 12, "Mismanagement of any of its officers, agents, or employees." "Employees" is generic. Would that refer, for instance, to a case where half a dozen men who were shovelling dirt onto a flat car, and one of the employees should hit another in the back of the head with a shovel? Would your bill go so far as to hold the road responsible for a damage of that kind?

Mr. FULLER. That is a doubtful question. Some think that it would, while others think not.

It is true that the bill would do that if it were a State measure, but in this case we are confronted with the question of the right of Congress to regulate interstate commerce. Now, the answer to your question would be whether or not legislation covering the particular point that you mentioned would be considered as regulating interstate commerce.

Mr. ALEXANDER. Let me go one step further. Do you want it to apply to that?

Mr. FULLER. We would like to have it apply just as far as the authority of Congress will take it. There is one thing about this legislation and I think it proper at this time to mention it. If Congress enacts this legislation, on account of the dual jurisdiction over this question it is very necessary from our standpoint, in order to preserve all of the rulings under employers' liability legislation in the various States, that this bill go as far as they go, for this reason: The Supreme Court has held, I understand, that States can legislate even as affecting interstate commerce, so long as Congress does not legislate. But as soon as Congress legislates, then the State law has got to give way—that is, so far as interstate commerce is concerned—to the act of Congress.

It is a question of whether or not, in view of the fact that some of the States have laws which would protect the man, I believe, in the instance that you cited, whether, if a man got hurt under those conditions and he was employed on a railroad engaged in interstate commerce, and the railroad company, upon the ground that they were a common carrier engaged in interstate commerce, would take the case to the Federal court, then it seems to me that the Federal act would apply, and whatever protection the man had under the State law would be taken away from him, and in making that statement I would apply it to all the provisions of this bill.

Mr. PARKER. Is not the State law a part of the contract between the man and the railroad, so that it would be enforced in the United States courts just as much as if it was made under the United States law?

Mr. FULLER. It is now, because the United States has not legislated on this question.

Mr. PARKER. Do not the United States courts now enforce the State laws?

Mr. FULLER. Congress has not legislated on this question.

Mr. PARKER. I understand that, and as Congress has not legislated, do not the United States now enforce the State laws and liabilities?

Mr. FULLER. Yes, sir; they construe them on cases of appeal which come to them. But this other question does not hinge upon that, as I understand it. While the Federal courts might now construe State laws, and if there are two laws applying to railroads and the case involves interstate commerce, it is very reasonable to suppose that even if the employee would bring the case in the State court, if the Federal rule was more lax in favor of the employer, he would ask to have it transferred.

Mr. PARKER. Then you think if there was a United States law as well as a State law, and one law would be enforced in one set of courts and the other in another set of courts, that a man could jump from one set of courts to the other to get the benefit of any difference in the law?

Mr. FULLER. If the Federal law was more favorable to the road and interstate commerce was involved, I think the road would try to have the Federal law applied, and that could be done in either the State or Federal courts.

Mr. STERLING. Would not the United States courts enforce this provision of law?

Mr. FULLER. Yes, sir; they would, undoubtedly, and so would the State courts; but if a case was brought before the courts, and there

was a Federal question involved and there was Federal legislation affecting that particular thing, it seems to me that, in view of all the decisions of the Supreme Court on that question, the State law has got to give way, no matter whether it is tried in either the Federal or State courts. The same argument applies as to the second section.

Mr. BIRDSALL. Just one question. Are there any States which have abolished it as to any case not affecting a railway?

Mr. FULLER. Yes. The law of Colorado applies even to a farm hand in the field and a chambermaid in the house, and I think there are some other laws in which the doctrine is somewhat modified as to other classes of employment.

Mr. GILLETT. Kansas has a law, has it not?

Mr. FULLER. Yes, sir. I have here copies of all the laws of the various States on the employers' liability question.

Mr. BIRDSALL. Will you put that in this hearing?

Mr. FULLER. It is a public document, Appendix J of the hearings before the Senate committee on the rate question.

Mr. PARKER. Of this year?

Mr. FULLER. Yes, sir; this year.

Now, Mr. Chairman, I was about to say that England, where this fellow-servant rule originated, has repudiated it. It has modified it to a great degree by an employers' liability law. It also followed that law by what is known as the "English compensation act." But this comparative backwardness on the part of our Federal Government is not confined to England alone. The law of the world upon this subject shows we are behind practically all of the industrial countries.

ENGLAND.

In 1880 England passed an employers' liability law which greatly modifies the fellow-servant doctrine, inasmuch as it made the employer responsible for injuries received by workmen through the negligence of any fellow-employee having charge of any railway engine, switch, or signal, or of any employee having the giving of orders, or injured in obedience to any improper rule or order. This law is broad in its application, and includes agricultural laborers.

While the law of 1880 was considered a great step in reform, it did not meet the expectations of the working classes. Neither did it bear out the claims of its opponents that the employers would be driven into bankruptcy through damage suits brought by injured workmen; so in 1897 the English Government made a great leap in advance and passed what is known as the "workmen's compensation act."

This act applies to all hazardous employment, including railroads, the exceptions being seamen, fishermen, persons engaged in transport service, street-railway men, cabmen, and those who tend horses, and under its provisions the employer is not only responsible for the negligence of himself, his officers, agents, and employees, but is liable for all injuries received by employees through any cause, excepting only that which is caused through the serious and willful misconduct of the victim himself.

GERMANY.

The German law of 1838 made railroads liable to their empolyees for injuries, regardless of whether such injuries were caused by the

negligence of fellow-employees or not, except where it was proven that the injury was caused through the fault of the victim himself, or through some unpreventable external cause.

This law was amended several times, each time broadening its application to various kinds of employment, until in 1873 it was made to include all hazardous occupations.

Upon the recommendation of Emperor William Germany in 1884 also made a marked advance and passed a compulsory-insurance law, which requires the employer to insure his employees against death and permanent disability, regardless of whether the injury was caused by the negligence of the master or any of his employees, the only exception being an accident brought about intentionally by the victim himself.

This law applies to the more dangerous occupations, and was also made to cover public officers and soldiers.

AUSTRIA.

The Austrian employers' liability law of 1869 made railroad companies liable for all injuries to their employees, except where the accident was brought about by the victim's own negligence.

In 1887 an insurance law was passed which made the employer liable to his employees for death and all disabilities of over five weeks' duration, the only exception being when the accident was intentionally caused by the workman.

This law as originally enacted applied to employment in factories, smelting works, mineral mines, dock yards, slips, quarries, enterprises connected with the erection of buildings, or otherwise with construction work.

In 1894 its provisions were extended to include employment on all railroads and other transportation by land and water, dredging, cleaning of streets and buildings, industrial enterprises connected with storehouses, including warehouses and wood and coal yards, theaters, paid fire brigades, digging of canals, sweeping of chimneys, stonecutting, well digging, and construction work not heretofore included.

NORWAY.

In 1894 Norway passed a compulsory-insurance law similar to that of Germany heretofore mentioned.

FINLAND.

In 1898 Denmark passed a compulsory-insurance law which reployer to insure his employees against all accidents, excepting only those caused by the willful or gross neglect of the victim himself.

DENMARK.

In 1898 Denmark passed a compulsory-insurance law which requires the employer to insure his workmen against all accidents not occasioned intentionally or through the gross neglect of the victim himself.

Provisions of this law apply to employment in dangerous industries.

ITALY.

The Italian compulsory-insurance law of 1898 requires the employer to insure his workmen against all accidents through which they are disabled for over five days.

It applies to employment in dangerous occupations, including mines, turf pits, house building, gas, electric light, and telephone works where explosives are manufactured or used, arsenal and navy-yards, and in the following enterprises where more than five workmen are employed: Construction or operation of railroads, inland transportation by water, street railways, construction and repair of harbors, canals, and dikes, construction and repair of bridges, tunnels, and ordinary national and provincial roads, and industrial establishments operated by mechanical power.

FRANCE.

Previous to the year 1898 the provisions of the Napoleonic Code relating to employers' liability were in vogue, and made the employer answerable for all injuries received by his workmen, there being no distinction between employees and third persons.

In 1898 the French compulsory-insurance law was passed. This insures the employees against accidents received directly or indirectly because of their work, except when received through the inexcusable neglect and gross carelessness of the victim his compensation for the injury may be reduced.

This law applies to employment in building trades, mills, factories, work yards, transportation by land and water, public storehouses, mines, furnaces, quarries, any enterprise in which explosives are manufactured or used and in which a machine is employed operated other than by human or animal power.

SPAIN.

Spain in the year 1900 enacted a compulsory insurance law. Under its provisions the employer is required to insure his employees against all accidents, except those due to superior force.

It applies to employment in the following industries: Factories, shops, and industrial establishments where any other than human force is used; mines, salt works, quarries, metal works, and architectural iron and steel shops; factories and docks; construction, maintenance, and repair of buildings, including masonry and all other accessory operations; carpenters, locksmiths, stonecutters, painters; establishments in which explosives, inflammables, unwholesome or poisonous substances are manufactured or used; construction, maintenance, and repair of railroads, harbors, roads, canals, dikes, aqueducts, sewers, and similar operations; agriculture and forestry; where machinery operated by any other than human power is used; cartage, transportation by land, sea, or canal; cleaning of streets, gutters, and sewers; warehouses and storehouses for coal, firewood, or building timber; theaters, so far as it concerns the salaried personnel; fire brigades; gas and electric-light works; laying and keeping in repair of telephone wires; laying and removal of electric wires and

lightning rods; persons employed loading and unloading, and every analogous industry or work not comprised in the preceding list.

SWITZERLAND.

Under the Swiss law of 1875, as supplemented by the acts of 1877, 1881, and 1887, the employer is responsible to his employees for all injuries received in the course of employment except those produced through the so-called acts of God, whether such injuries were received through the negligence of officers, agents, employees, or otherwise. It also made the employer responsible for diseases contracted in factories.

This law applied to the following classes of labor: Railroads, steamboats, factories, all occupations in which explosives are regularly produced or used; building trades, all operations in connection therewith; livery; care of boats and rafts; erection and repair of telephone and telegraph lines; erection and removal of machinery and other movings; streets, bridges; the operation of hydraulic engineering, and the exploitation of mines, quarries, and pits.

BELGIUM.

The Belgium law on this subject is contained in the Napoleonic Code heretofore referred to in France. It makes the employer responsible for the negligence of all his servants, and applies to all classes of employment.

HOLLAND.

The employers' liability law, as expressed in the Napoleonic Code, is also the law of Holland.

SWEDEN.

Sweden's liability law makes the employer liable for all injuries received by employees which are not due to the culpable negligence of the victim. It applies to railroads.

RUSSIA.

The criminal law of Russia makes the employer who is guilty of negligence responsible for the cost of medical treatment and subsistence of an incapacitated employee, and in addition, in case of death, the support of the dependents.

The civil common law of Russia also makes the employer responsible for the negligence of his employees as well as himself. In addition to this a special act covering railroad and steamship employees put the burden of proof upon the employer, and he can not release himself from liability only when he can prove that the accident was due to unavoidable causes or the negligence of the victim himself.

Contributory negligence, however, does not bar a recovery, but only serves to diminish the amount of the indemnity.

HUNGARY.

The employers' liability law of Hungary makes the employer liable for all injuries to his employees not due to the victim's own negligence. It applies to railroads and mining.

ROUMANIA.

In 1895 Roumania passed an insurance law which applies to mines, and requires the employer to insure his employees against accident.

The foregoing shows that six foreign states have passed employers' liability laws under which employers are responsible for the negligence of all of their employees, and ten have insurance laws which require the employers to insure their workmen against all injuries received in the course of employment, whether through the negligence of their employers or otherwise.

But, as before stated, this unfavorable comparison of our National Government is not to be reckoned with foreign countries alone, but on this question, as will be shown by the following, we are behind a majority of our own States, as well as the Territories of New Mexico and Porto Rico.

Mr. ALEXANDER. Now, Mr. Fuller, does the law in any one of those States and countries go as far as this bill H. R. 239?

Mr. FULLER. If you will excuse me just at this moment, I will come to that. I will say, so far as section 1 is concerned, yes; they have. I am just about to leave section 1; and there are other States which have legislation which go as far as we do on section 2, and practically as far on section 3.

Mr. ALEXANDER. Do they go as far as line 12 of section 1, "officers, agents, or employees?"

Mr. FULLER. Oh, yes; yes, sir.

Mr. GILLETT. Not all of them, but some of them?

Mr. FULLER. Not all of them, but some of them. I will say here that these States have not all abolished what is known as the fellow-servant doctrine. Quite a number of them have. A number of them have modified it, and some of them have limited the law to employees on railroads; and some of them who have abolished it have confined the abolition to employment on railroads.

KENTUCKY.

The constitution of Kentucky makes employers liable for deaths due to the negligence of their employees. (Kentucky Constitution, sec. 241.)

In 1894 the legislature enacted this provision into statute.

GEORGIA.

Georgia entirely abolished the fellow-servant doctrine as to railroads by statute in 1856. (Georgia Code, 1895, secs. 2297, 2323.)

IOWA.

In 1862 the legislature of Iowa entirely abolished the doctrine as to railroad employees operating trains. (Iowa Code, 1897, sec. 2071.)

KANSAS.

In 1874 Kansas entirely abolished it as applied to railroads. (Kansas General Statutes, 1889, par. 1251.)

WISCONSIN.

In 1875 Wisconsin entirely abolished it. (Wisconsin Acts, 1875, ch. 173.)

This law was repealed by chapter 232 of the acts of 1880. In 1889 the legislature enacted a new law which was more limited. (Wisconsin Acts, 1889, ch. 438.)

In 1893 this law was repealed by chapter 220, which chapter entirely abolished the fellow-servant doctrine as to men actually engaged in switching or the running of trains. In 1903 this law was amended so as to make it broader in scope. (Wisconsin Laws, 1903, ch. 448.)

MINNESOTA.

In 1887 Minnesota entirely abolished the doctrine as regards railroad employees engaged in operating railroads. (Minnesota General Statutes, 1894, sec. 2701.)

FLORIDA.

In 1887 Florida abolished the doctrine as regards railroad employment. In 1891 this law was amended somewhat, but as it now stands it practically abolishes the fellow-servant doctrine in cases where employees are injured through the running of locomotives, cars, or other machinery. (Florida Revised Statutes, 1892, p. 1008.)

OHIO.

In 1890 Ohio modified the doctrine by declaring that employees who have power to direct other employees are not fellow-servants of those employees in other departments who have not the poower to direct or control in the branch or department in which they are employed. (Ohio acts, 1890, p. 149, sec. 3.)

In 1902 another law was passed which makes all employers liable for injuries to employees which are caused by reason of any defect in the condition of the machinery connected with or used in the business of the employer when such defect was due to the negligence of any person in the service of the employer, intrusted by him with the duty of inspection, repair, or of seeing that the machinery or appliances were in proper condition. (Ohio Laws, 1902, p. 114.)

MISSISSIPPI.

In 1890 by an amendment to the constitution Mississippi greatly modified the doctrine as regards railroad employees by declaring that an employee could recover for an injury received through the negligence of a superior agent or officer, or of a person having the right to control or direct the services of the party injured, and also when the injury results from the negligence of a fellow-servant engaged

in another department of labor from that of the party injured, or of a fellow-servant on another train of cars, or one engaged about a different piece of work. (Mississippi Constitution, sec. 193.)

In 1892 this provision of the constitution was adopted by the legislature as official. (Mississippi Code, 1892, sec. 3559.)

In 1896 the legislature extended the provisions of this section by making them apply against all classes of corporations.

TEXAS.

By act of 1891 and an amendment in 1893 Texas greatly modified the doctrine as to railroad employees by declaring that employees having the authority of superintendence, control, or command of other persons in the employment or with the authority to direct any other employee in the performance of the duty of such employee are not fellow-servants, and that employees engaged in different departments are not fellow-servants. (Texas Revised Statutes, 1895, secs. 4560 F, 4660 G, 4560 H,)

In 1897 these provisions were also made to apply to street railways. (Texas Acts, 1897, ch. 6.)

NEW MEXICO.

In 1893 the Territory of New Mexico modified the doctrine as to railway corporations by making them liable for injuries received by employees, occurring or sustained in consequence of any mismanagement, carelessness, neglect, default, or wrongful act of any agent or any employee of such corporation, while in the exercise of their several duties, when such mismanagement, carelessness, neglect, default, or wrongful act of such employee or agent could have been avoided by such corporation through the exercise of reasonable care or diligence in the selection of competent employees, agents, or by not overworking said employees or requiring or allowing them to work an unusual or unreasonable number of hours. (New Mexico Compiled Laws, 1897, sec. 3216.)

ARKANSAS.

In 1893 Arkansas greatly modified the doctrine as to railroad employees by declaring that employees having the authority or superintendence, control, or command of other persons in the employment or with the authority to direct any other employee in the performance of the duty of such employee are not fellow-servants, and that employees engaged in different departments are not fellow-servants. (Arkansas Digest, 1894, secs. 6248–6250.)

SOUTH CAROLINA.

South Carolina, in its constitution as ratified in 1895, greatly modified the doctrine as applied to railroad labor by declaring that an employee may recover for injuries received through the negligence of another employee having the right to control or direct the services of a party injured, and also when the injury results from the negligence of a fellow-servant engaged in another department of labor from

that of the party injured, or of a fellow-servant on another train of cars, or one engaged about a different piece of work.

This section of the constitution also gives the legislature the authority to extend its provisions to other classes of employees. (South Carolina Constitution, art. 9, sec. 15.)

In 1901 the legislature extended the same rights to employees of street railways. (South Carolina Laws, 1901, act 405.)

MISSOURI.

In 1897 Missouri greatly modified the doctrine as applied to railroads by declaring employees intrusted by such corporation with the authority of superintendence, control, or command of other persons in the employ or service of such corporation, or with the authority to direct any other servant in the performance of any duty of such servant, or with the duty of inspection or other duty owing by the master to the servant, are not fellow-servants with such employees, and by saying that employees in any department or service are not fellow-servants with employees in any other department or service of such corporation. (Missouri Acts, 1897, p. 96.)

NORTH CAROLINA.

In 1897 North Carolina entirely abolished the doctrine as applied to railroads. (North Carolina Acts, 1897, vol. 2, ch. 56.)

NORTH DAKOTA.

In 1899 North Dakota greatly modified the doctrine as applied to railroads by giving employees the right to recover when injured through the negligence of any other employee while engaged in switching or operating trains. (North Dakota Acts, 1899, ch. 129.)

ALABAMA.

In 1885 Alabama greatly modified the doctrine as applied to all classes of employment, not confining itself to railroads alone, by making employers liable for the negligence of:

(1) Persons intrusted by the employer with the duty of seeing that the way, works, machinery, or plant are in proper order.

(2) Persons who have any superintendence intrusted to them by their employer.

(3) Persons authorized to give the order or direction which occasioned the injury.

(4) Persons acting in obedience to rules, regulations, or by-laws, obedience to which caused the accident.

(5) Persons obeying particular instructions given by any person duly authorized in that behalf by the employer.

(6) Persons in charge of any signal, points, locomotives, engines, switches, cars, or trains upon a railway, or upon any part of a track of a railway. (Alabama Code, 1897, secs. 1749–1750.)

MASSACHUSETTS.

In 1887 Massachusetts greatly modified the doctrine as regards all classes of employment except domestic and farm laborers.

This law was amended in 1892, 1893, and 1894, and as it now stands makes the employer liable for the negligence for the following classes of servants:

(1) Persons intrusted by the employer with the duty of seeing that the ways, works, or machinery were in proper condition.

(2) Persons intrusted and exercising superintendence, whose sole and principal duty is that of superintendence.

(3) Persons acting as superintendent with the authority and consent of the employer.

(4) Persons in charge of any signal, switch, locomotive, engine, or train upon a railroad. (Massachusetts Acts, 1887, ch. 270; also 1893, ch. 359, and 1894, ch. 499.)

INDIANA.

In 1893 Indiana greatly modified the doctrine as applied to employees of all corporations, except municipal, by declaring that such corporations are liable for the injuries received through the negligence of any person in the service of such corporation to whose order or direction the injured employee at the time of the injury was bound to conform and did conform; and where such injury resulted from the act or omission of any person done or made in obedience to any rule, regulation, or by-law of such corporation, or in obedience to the particular instructions given by any person delegated with the authority of the corporation in that behalf; also where such injury was caused by the negligence of any person in the service of the corporation who has charge of any signal, telegraph office, switch yard, shop, roundhouse, locomotive engine, or train upon a railway, or where such injury was caused by the negligence of any person, coemployee, or fellow-servant engaged in the same common service in any of the several departments of the service of any such corporation, the said person, coemployee, or fellow-servant at the time acting in the place and performing the duty of the corporation in that behalf, and the person so injured obeying or conforming to the order of some superior at the time of such injury having authority to direct. (Indiana Annotated Statutes, 1894, secs. 7083, 7085, 7087, 7089.)

COLORADO.

In 1893 Colorado modified the doctrine somewhat, and in 1901 it completely abolished the doctrine as applied to all classes of labor.

UTAH.

In 1896 Utah greatly modified the doctrine as regards all classes of employees by declaring that employees who are intrusted by their employers with the authority of superintendence, control, or command of other persons in the employ or service of such employer, or with the authority to direct any other employee in the performance of any duties of such employer are not fellow-servants, and that all other

employees are not fellow-servants unless they are working together at the same time and place, to a common purpose, of the same grade of service, and neither of such persons are intrusted by such employer with any superintendence or control over his fellow-employees. (Utah Acts, 1896, ch. 24.)

MARYLAND.

In 1902 the legislature of Maryland passed a law which applies to coal and clay mines, quarries, steam and street railroads, and makes the employer liable to his employees for injuries caused through the negligence of his servants or employees, unless a certain plan of insurance, which is laid down by the statute, is adopted. (Maryland Acts, 1902, ch. 139.)

VIRGINIA.

Section 12 of the Virginia constitution of 1902 abolished the doctrine with reference to a large class of railroad employees and permits the general assembly to enlarge this class of employees and to extend these rights to employees of any firm or corporation.

In 1902 the legislature enacted a law which greatly modified the doctrine as applied to railroad employees by making railroad corporations liable to their employees for injuries received when such injury results from the wrongful act, neglect, or default of an agent or officer of such corporation superior to the employee injured, or of a person employed by such corporation having the right to control or direct the services of such employee injured, or the services of the employee by whom he is injured; and also when such injury results from the wrongful act, neglect, or default of a coemployee engaged in another department of labor from that of the employee injured, or of a coemployee on another train of cars, or a coemployee who has charge of any switch, signal point, or locomotive engine, or who is charged with dispatching trains or transmitting telegraph or telephonic orders.

OREGON.

In 1903 the legislature of Oregon enacted a law practically word for word the Virginia statute just quoted.

MONTANA.

The legislature of Montana, which is now sitting, has just passed an act which completely abolishes the doctrine as applied to railroad employees.

PORTO RICO.

The Revised Statutes of Porto Rico of 1902, section 322, provides that the employer shall be liable to the employee for injury by reason of the negligence of any person in the service of the employer who has charge of, physically controls, any signal, switch, locomotive engine, car, or train in motion, whether attached to an engine or not, upon a railroad.

SECTION 2.

Section 2 of this bill is a recognition of the doctrine of comparative negligence.

The doctrine of contributory negligence, as applied by some of our courts, works great injustice to the employee, for the reason that no matter how grossly negligent the master may be, if the servant is in the slightest degree negligent he is debarred from recovery, and is therefore made to bear not only the burden of his own slight negligence, but also the burden of the master's gross negligence, thus permitting the master to go scot-free and not answer in the slightest degree for his gross negligence.

It is not our desire to ask that an employee be paid for an injury that he alone is responsible for, but we do think gross negligence is worse than slight negligence, and the person guilty thereof should not be released from answering therefor simply because some one else is guilty of slight negligence.

We believe such a rule has a tendency to make the master less vigilant regarding the safety of his servants.

Some of the arguments against the fellow-servant doctrine can be applied with as much force against the doctrine of contributory negligence.

The duties of an ordinary railroad employee are so exacting that he must work with both his head and hands, and many times when called upon to perform such duties his whole being is so absorbed and taken up with his work that he is liable to a slight degree to contribute to his own injury, but would not have done so had the master not been grossly negligent.

Mr. ALEXANDER. Give us one or two illustrations, so that we can get that down.

Mr. FULLER. I will do that.

For example, let us say a railroad company stretches a wire across the track and it is not high enough to clear a man on the top of a box car; the company posts a bulletin on a bulletin board at a terminal 75 miles from the wire, in which the men are notified of the location of this wire. The brakeman starts out on his train, and about the time the train arrives at the place where the wire is stretched the engineer through the darkness sees the rear end of another train on the track a short distance ahead of him; he sounds the whistle for the brakeman to apply the brakes, the brakeman responds by climbing to the top of the train, and seeing the danger ahead his whole mind is taken up with the thought of stopping his train, and he speeds over the train in the darkness applying the brakes, the thought of the overhead wire having been thoroughly removed from his mind for the time being, and it strikes him and he is thrown beneath the cars and injured. If I mistake not, some of our courts would hold that he could not recover for the reason that he had been notified of the whereabouts of the wire, and he contributed to his own injury by exposing himself to it, this, too, in the face of the fact that the company was grossly negligent by not providing longer poles upon which to string this wire.

Mr. ALEXANDER. Mr. Fuller, is there any State court that holds that that should not be regarded as contributory negligence on the part of the employee?

Mr. FULLER. I am going to get to that.
Mr. ALEXANDER. Go ahead.
Mr. FULLER. Now, another case.

We will say that a switch stand is too close to the track; it has been there for a long time and the train men know of the danger; but suddenly in the dark of night there is a call for brakes, and the brakeman swings out on the ladder on the outside of the car for the purpose of climbing to the top to apply the brakes, and this switch stand strikes him. I venture the assertion that some judges would say that he was guilty of contributory negligence, as he knew of the location of this switch stand and therefore was in a position to guard against it, regardless of the fact that the company was guilty of gross negligence in placing the switch stand so close to the track.

In the case of Arrighi *v.* Denver and Rio Grande Railroad Company (129 Fed. Rep., 347), Arrighi, a brakeman, in attempting to couple two cars equipped with link-and-pin couplers, which were being used in violation of the national safety appliance law, had his hand crushed. The evidence in the case does not show that he was in anywise negligent. He did nothing more than an ordinary, prudent man would have done under the circumstances, yet because he attempted to make this coupling which he was ordered to do the United States circuit court of appeals of the eighth circuit held that he was guilty of contributory negligence.

In the case of Schlemmer *v.* Buffalo, Rochester and Pittsburg Railroad Company (207 Pa., 198) the evidence shows that the company was transporting a steam-shovel car from the State of New York to a point in the State of Pennsylvania. The drawbar upon this steam-shovel car was of the old link-and-pin type, which was in violation of the national safety appliance law. It was also much lower than the drawbar on the caboose to which it was to be coupled, which was also a violation of that law. This drawbar was also under the car about 2 feet from the end. Schlemmer, a brakeman, was ordered by his conductor to couple this steam-shovel car to the caboose, and in order to do this he had to stoop down and contract himself to about one-half his natural height, and in this position, at about 9 o'clock at night, with lamp in hand, he had to walk along under this steam-shovel car while it was moving, watch to see that he was not run down from behind by the wheels, and guide a long iron coupling bar, weighing 80 pounds, which was fastened in the drawbar on the steam-shovel car, into a slot only 2 inches wide in the automatic coupler on the caboose. He missed the coupling, and happened to raise his head a little too high, and the top of it was crushed between the steam-shovel car and the caboose, killing him instantly. His widow sought to recover damages, and the trial court held that he was guilty of contributory negligence in not keeping his head down, and withheld the case from the jury, and this decision was affirmed by the supreme court of the State of Pennsylvania.

Here was a case where the employer was grossly negligent and was also violating an act of Congress, yet because the poor brakeman, while laboring under these extraordinary disadvantages, happened to raise his head a little too high the employer is released from liability.

Here is another instance, and I get it from a public document. It was probably put in there unconsciously as an argument on this bill,

but there is nothing more applicable. This comes from the Fifteenth Annual Report of the Interstate Commerce Commission, page 71. In speaking of defective uncoupling appliances, and the number of men injured as the result thereof, the Commission says:

> The brakeman attempting to use it finds difficulty in using it. This often or usually happens while the car is in motion, so that the man has to run alongside of the train; and any unexpected delay or difficulty naturally draws his attention away from the ground and his footing, and thus leads him almost unconsciously to neglect his own safety.

It is very easy to see how a man can contribute in some slight degree to his own injury. In a case of this kind I hold that a railroad company which is required by law to have its uncoupling rods in such condition that cars will couple and uncouple automatically is guilty of gross negligence, and that if a man as a result of having to work with those appliances unconsciously neglects his own footing or safety, as stated here, is guilty of no more than slight negligence, at least, and the company should be held to account for its own gross negligence.

Should a brakeman refuse to work under these conditions he is discharged. I have here a list of countries which have legislation which permits a man to recover, even if he has been guilty of negligence.

Mr. TIRRELL. What is the phraseology of the law there?

Mr. PARKER. The laws of England are not in this?

Mr. FULLER. No, sir; they are not. I will be glad, however, to furnish you a copy.

Mr. PARKER. Have you a copy of the various laws?

Mr. FULLER. Yes, sir. Judge Littlefield has a copy.

Mr. PARKER. There is no printed copy, then?

Mr. FULLER. No, sir.

Mr. PARKER. What are you reading from?

Mr. FULLER. This is a synopsis of the laws of the different countries which I have prepared.

Mr. CLAYTON. What is the nature of that document which you furnished to Mr. Littlefield?

Mr. FULLER. It is the seventeenth annual report of the bureau of labor statistics of the State of New York, and it gives a review of all the liability legislation in the world.

Mr. CLAYTON. Is it a very lengthy document?

Mr. FULLER. The matter pertaining to this subject takes up probably 200 or 300 pages.

Mr. PARKER. What year?

Mr. FULLER. I have forgotten the year. It is the seventeenth annual report.

Mr. PARKER. The seventeenth annual report of New York?

Mr. FULLER. Yes, sir.

Mr. CLAYTON. That is a summary that you have there?

Mr. FULLER. Yes, sir; this is my own language.

ENGLAND.

The English compensation act of 1897 makes the master liable unless the injury is attributable to the serious and willful misconduct

of the workman himself. And while the doctrine of contributory negligence is not entirely abolished, the burden of proof is shifted to the employer.

GERMANY.

The German compensation law makes the master liable even though the injury is brought about by the workman himself, the only exception being when the accident was intentionally brought about by the workman.

ITALY.

The Italian law requires every accident to be compensated, but authorizes legal proceedings to secure reimbursement from a workman guilty of willful misconduct.

FRANCE.

Under the French law the doctrine of contributory negligence does not operate wholly to defeat the workman, but only serves to reduce the amount of damages he shall receive, the amount being reduced according to the degree of his negligence, and if the accident was caused by the inexcusable neglect of the employer or his representatives it may be increased within certain limits.

SWITZERLAND.

The Swiss law provides that if the injured person was partially at fault the damages to be paid are to be correspondingly reduced, and the burden of proof is put upon the employer.

RUSSIA.

Under the Russian law contributory negligence does not bar a recovery, but only serves to diminish the amount of indemnity, and the burden of proof is put upon the employer.

This shows that six foreign states have recognized the justice of the doctrine of comparative negligence.

As to the doctrine in the United States, as I understand it, the doctrine of comparative negligence in this country was first recognized in Illinois, and it was the law of that State for a great many years. But within the last ten or fifteen years, at least, the courts of that State have decided that that doctrine is obsolete. But I understand that there has been a recent decision in which the supreme court of that State has given the employee some right, even if he was negligent.

The doctrine, as laid down by Justice Schofield in Illinois in the case of Rockford, Rock Island and St. Louis Railway Company *v.* Delaney (82 Ill., 196), is as follows:

> The rule of this court is that the relative degree of negligence, in cases of this kind, is a matter of comparison, and that the plaintiff may recover although his intestate was guilty of contributory negligence, provided the negligence of the intestate was slight and that of the defendant was gross in comparison with each other; and, consequently, if the intestate's negligence was not slight, and that of his defendant gross in comparison with each other, there can be no recovery.

In the States of Georgia, Florida, Tennessee, and Kansas the courts *have either* followed the former Illinois rule or proceeded inde-

pendently upon a parallel theory to a greater or less extent. In each of these States we find a rule upon the subject of contributory negligence which Beach says savors of the rule of comparative negligence.

Section 3034 of the Georgia Code of 1895 reads:

No person shall recover damages from a railroad company for injury to himself or his property where the same is done by his consent or is caused by his own negligence. If the complainant and the agents of the company are both at fault the former may recover, but the damages shall be diminished by the jury in proportion to the amount of default attributable to him.

Section 3830 of the same code reads:

If the plaintiff by ordinary care could have avoided the consequences to himself caused by the defendant's negligence, he is not entitled to recover. But in other cases the defendant is not relieved, although the plaintiff may in some way have contributed to the injury sustained.

The supreme court of Georgia has not only repeatedly applied the principles laid down in these statutes, but has in some cases gone so far to apply the old Illinois rule.

Section 1 of chapter 3744 of the Laws of Florida, approved June 7, 1887, reads:

That no person shall recover damages from a railroad company for injury to himself or his property when the same is done by his own consent or is caused by his own negligence. If the complainant and the agents of the company are both at fault the former may recover, but the damage shall be diminished by the jury trying the case in proportion to the amount of default attributable to him.

The supreme court of Florida, in Florida Central and Peninsular Railroad Company *v.* Williams (37 Fla., 406), in construing this statute, held that:

Its effect is to abrogate in Florida the old rule * * * that wholly relieved the defendant from all liability when contributory negligence on the part of the plaintiff was shown, and introduced here the modern doctrine of comparative negligence, by which the contributory negligence of the plaintiff does not wholly relieve the defendant from liability, but entitles him to credit only in reduction in the amount of his liability.

This provision was carried into the Revised Statutes of 1892, and now stands as the law of that State in the form of section 2345.

In Dush *v.* Fitzhugh (Lea 2, 307) the supreme court of Tennessee held:

On the question of contributory negligence, the doctrine that any negligence whatever that remotely contributed to the accident or injury will preclude a recovery is not sustainable on principle. The sounder inquiry is, Whose conduct or neglect more immediately produced the injury done? If the injury was caused by the conduct, or was the immediate result of the conduct of the plaintiff to which the wrong of the defendant did not contribute as an immediate cause, then plaintiff should not recover. If defendant was guilty of a wrong by which plaintiff also in some degree was negligent, or contributed to the injury, it should go in mitigation of damages, but can not excuse or justify the wrong of the defendant.

Such is the result of our cases. The principle is, the mere fact that one person is in the wrong does not necessarily discharge another from the observance of proper care toward him, or the duty of so exercising his own rights as not to do him unnecessary injury.

In Railroad *v.* Walker (Heiskell 11, 383) the supreme court of Tennessee also held:

Under statutory regulations, Code, sections 1166–1168, in regard to railroad companies and the decisions of this court interpreting them, in case of failure *on the part* of the railroad company to show that the precautions required have

been complied with, the company is liable for the injury resulting, although the observance of the requirements would not have prevented the injury and the injured party contributed to the damage by his own negligence. Yet his negligence may and should be looked to by the jury in mitigation of damages.

We are of the opinion that the plaintiff contributed very greatly to the accident by his own negligence. We suppose the jury so thought and took this into consideration in assessing their damages, otherwise their verdict might have been larger.

Affirm the judgment.

In Kansas and Colorado Railway Company *v.* Peary (29 Kans., 170, 180) the court said:

While it is settled in this State that a party may recover for injuries done to him or his property, even if his negligence is slight, nevertheless this court has not adopted what is generally called the rule of comparative negligence.

Chapter 139 of the Maryland Laws of 1902 provides that—

If it appears that such injury or death was caused by the joint negligence of such employer, his servants, or employees on the one hand, and the negligence of the injured or deceased on the other hand, then the employer shall be liable for one-half of the damages sustained by such injury or death.

Beach, although a critic of the old Illinois rule, speaks in these friendly terms of the rule in Georgia and Tennessee:

Much may be said in favor of the rule which counts the plaintiff's negligence in mitigation of the damages in those cases which frequently arise wherein, on the one hand, a real injury has been suffered by the plaintiff by reason of the culpable negligence of the defendant, and yet where, on the other hand, the plaintiff's conduct was such as, to some extent, contribute to the injury, but in so small a degree that to impose upon him the entire loss seems not to take a just account of the defendant's negligence. In those cases which may be denominated "hard cases" the Georgia and Tennessee rule in mitigation of damages, without necessarily sacrificing the principle upon which the law as to contributory negligence rests, is a rule against which, in respect of justice and humanity, nothing can be said. Where the severity of the general rule might refuse the plaintiff any remedy whatever, as the sheer injustice of the rule as laid down in Davies *v.* Mann would impose the whole liability upon the defendant, it is quite possible to conceive a case where the application of the rule which mitigates the damages in proportion to the plaintiff's misconduct, but does not decline to impose them at all, would work substantial justice between the parties. (Beach on Contributory Negligence, p. 136.)

Shearman and Redfield on the Law of Negligence, fifth edition, page 158, in commenting on the rule in Georgia, Florida, and Tennessee, say:

This is substantially an adoption of the admiralty rule, which is certainly nearer ideal justice, if juries could be trusted to act upon it.

Mr. Chairman, we do not come of the school which has so little faith in our juries. This authority speaks of this as coming near ideal justice, but says that juries can not be trusted to administer it. We believe that the jury is just as safe to trust as the court. The jury comes fresh from the people, and it represents their views more than does the judge with all of his musty precedents.

Doctor Wharton, in commending the old Roman law, under the title "Injuria non excusat injurian," says:

No matter how negligent the plaintiff may have been, this does not excuse the defendant in negligently injuring him, if this injury could have been avoided by the exercise of the diligence good business men are accustomed to exercise in such matters; nor can the plaintiff's culpa levissima bar his recovery. If it does there is no plaintiff who can recover, for there is no human action to which culpa levissima is not imputable. (Wharton on Negligence, 2d ed., p. 1x.)

Mr. Wharton says that this was a part of the law of Rome "when Rome embraced all civilization," and that the law of Rome—

is the product of a practical and regulative jurisprudence, based, by the tentative processes of centuries, on humanity as it really is, and so framed as to form a code for a nation which controlled in periods of high civilization the business of the globe.

The following quotation is taken from a book issued by the State of Pennsylvania in the year 1901, and entitled "The Legal Relations between the Employed and Their Employers in Pennsylvania, Compared with the Relations Existing between Them in Other States," page 181:

Some States have attempted to establish another rule that merits consideration. It is an attempt to measure or compare the negligence on both sides, and then award judgment in favor of the least culpable. This doctrine has been scouted at in Pennsylvania, but it has been adopted in Illinois and Georgia, and is gaining ground. Such a strong principle of justice underlies it that it commends itself to many.

Beach, in defining the doctrine of comparative negligence, says:

Reduced to a canon, it amounts to this: Slight negligence on the part of the plaintiff * * * is not a defense to gross negligence on the part of the defendant.

Shearman and Redfield on the Law of Negligence, fourth edition, 57, define the degrees of negligence thus:

Gross negligence is want of slight care; ordinary negligence is want of ordinary care, and slight negligence is want of great care.

In Louisville, etc., R. Co. *v.* Robinson (4 Bush, 507, 509), in defining gross negligence, Chief Justice Robertson, of Kentucky, said:

Gross neglect is either an intention to wrong or such a reckless disregard of security and right as to imply bad faith, and therefore squints at fraud and is tantamount to the magna culpa of the civil law, which in some respects is quasi criminal.

Mr. Chairman, we believe our proposition is fair. It makes each man who is guilty of negligence responsible for what negligence he has been guilty of, and we think that is no more than right. We believe also that if it is enacted into law it will not only give employees greater rights in the courts, but will also tend to lessen the number of accidents, for if railroad companies are held to account for their gross negligence where heretofore they have been allowed to go free it will cause them to throw greater safeguards around the lives and limbs of their employees.

Mr. GILLETT. Do I understand you that the amendments you suggested this morning are intended to cover the law of these States that you have just referred to?

Mr. FULLER. Yes, sir; with this provision added, that all questions of negligence and contributory negligence shall be submitted to the jury.

Mr. GILLETT. That is all right.

Mr. FULLER. Under the Constitution we have that right now.

Mr. GILLETT. It is the law now.

Mr. FULLER. But some of our judges seem to think they have not enough duties to perform without helping the jury out, and they have arrogated to themselves the duty of passing upon questions of *contributory negligence* as questions of law rather than questions of fact.

Mr. BIRDSALL. How does your proposed amendment help that proposition?

Mr. FULLER. We say that all questions as to contributory negligence shall be submitted to the jury.

Mr. BIRDSALL. Is it not a question for the courts to say whether there is a question of that kind to be submitted?

Mr. FULLER. We have understood that is a question for the jury to find out, whether there is contributory negligence or not.

Mr. TIRRELL. The courts generally, where they have taken the case from the jury, have said that there was no evidence to sustain the case of the plaintiff.

Mr. FULLER. As I understand it now, the Constitution requires that questions of fact shall be submitted to the jury and that the citizen is entitled to have a jury pass upon them.

Mr. GILLETT. You think that this will help the bill?

Mr. FULLER. I think so. I think if that statute is put before a judge and plead by counsel for the plaintiff it will have some effect.

The object of section 3 of this bill is to prevent the master from releasing himself from his liability under sections 1 and 2 through contracts of employment and insurance. Unless this be done the object of this whole legislation would fall flat, for the reason that the railroad companies before employing a man would make him sign a contract agreeing to relieve them from liability for injury.

Train baggage masters, in addition to their regular duties performed for railroad companies, are also often required to handle express, and the following is a sample of the release contracts which they are required to sign. I will only quote a few extracts from these contracts, and will submit the whole contract as a part of my testimony. This is from an application of the American Express Company:

And whereas such express company, under its contracts with many of the corporations and persons owning or operating such railroad, stage, and steamboat lines, is or may be obligated to indemnify and save harmless such corporations and persons from and against all claims for injuries sustained by its employees:

Now, therefore, in consideration of the premises and of my said employment, I do hereby assume all risk of accidents and injuries which I shall meet with or sustain in the course of my employment, whether occasioned or resulting by or from the gross or other negligence of any corporation or person engaged in any manner in operating any railroad or vessel, or vehicle, or of any employee of any such corporation or person, or otherwise, and whether resulting in my death or otherwise.

He has got to agree to release the railroad company from gross negligence.

Mr. CLAYTON. Has any court upheld that sort of an enactment?

Mr. FULLER. Yes; they have upheld that sort of an agreement. It has been upheld by the Supreme Court of the United States. [Reading:]

And I do hereby agree to indemnify and save harmless the American Express Company of and from any and all claims which may be made against it at any time by any corporation or person under any agreement which it has made or may hereafter make, arising out of any claim or recovery upon my part, or the part of my representatives, for damages sustained by reason of my injury or death, whether such injury or death result from the gross negligence of any person or corporation, or of any employee of any person or corporation, or otherwise.

And I hereby bind myself, my heirs, executors, and administrators with the payment to such express company, upon demand, of any sum which it may be compelled to pay in consequence of any such claim, or in defending the same, including all counsel fees and expenses of litigation connected therewith.

He has got to sign an agreement to pay the expense to prosecute the case against himself. [Reading:]

I do further agree that in case I shall at any time suffer any such injury, I will at once, without demand, and at my own expense, execute and deliver to the corporation or persons owning or operating the railroad, stage, or steamboat line upon which I shall be so injured a good and sufficient release, under my hand and seal, of all claims, demands, and causes of action arising out of such injury, or connected with or resulting therefrom.

Here is a copy of an application for employment which is used by one of the big railroads of the country—the Santa Fe—and I will only quote a part of it. It fills several pages. This man is required to sign before he gets into the employment of the road, and before he knows the road. Here is what he has got to say "yes" to.

Mr. BRANTLEY. Do not most of the States forbid the kind of contract you refer to?

Mr. FULLER. Yes, sir.

Mr. BRANTLEY. And has any respectable court ever held that a man must waive his right to the damage before the injury occurs?

Mr. FULLER. Yes, sir.

Mr. BRANTLEY. I would like to know what court it is.

Mr. FULLER. I will cite you the decision of the Supreme Court in the case of Voight *v.* Baltimore and Ohio Southwestern Railroad Company (176 U. S., p. 498).

Mr. HENRY. Where did that injury occur?

Mr. FULLER. It has been a good while since I went over the decision and I have forgotten; but it is the case of an express messenger in the employment of an express company.

Mr. CLAYTON. You say that the courts have upheld a contract waiving damages previous to the injury, made by a railroad company excusing itself from gross negligence?

Mr. FULLER. I think so; in this decision I have cited——

Mr. GILLETT. Is not the decision that you have cited where the man was in the employ of an express company?

Mr. FULLER. Yes, sir.

Mr. GILLETT. And his right of action was against the railroad company?

Mr. FULLER. I think so.

Mr. GILLETT. Was there not an arrangement that the railroad would not be responsible for the employees of the express company?

Mr. FULLER. Yes, sir.

Mr. GILLETT. And he was not, at the time of his injury, the employee of the railroad company?

Mr. FULLER. And it was through one of these applications that I have just cited. Now, I will say, in order to have everything right on that, that this application that I have read of the American Express Company is not only presented to employees who also act as baggage masters, but it is the contract that they require of all of their express messengers.

To return to this Santa Fe application:

30. Do you understand that this company does not block frogs, guard rails, *or switches, and do you* agree to assume the risks therefrom?

35. Do you know that it is dangerous to stand erect upon cars, and especially cars above average height, while passing over, through, or under bridges or viaducts at which there are no telltales or other warnings, as follows?

Now, here is a list of 50 of these bridges between certain mileposts over their hundreds of miles of road, which a man has to say he knows the location of, and that he releases them from the liability of injury which may happen to him from them. How is a man to know all that? But he must sign this or he does not get employment. [Reading:]

And do you agree to assume the risk therefrom, and from such other bridges, viaducts, or other overhead obstructions which may be noted from time to time on the time card, and do you acknowledge actual notice of all of the same, and that in some of said overhead bridges some of the overhead braces are lower than others?

Do you agree that you will not assume that anything is safe?

I do not think they would ask that of a passenger to whom they are advertising for trade.

Mr. PEARRE. What railroad is that?

Mr. FULLER. The Santa Fe. This is a special form. It says, "Form 1692—Special." [Reading:]

Do you understand that it is expressly agreed by the company that it is your right and duty, under all circumstances, to take sufficient time before exposing yourself, to make such examinations as you have here agreed to, and to refuse to obey any order which would expose you to danger? ——— ———.

Now, on the face of it that looks right, but any man who has worked for a railroad company will bear testimony to this fact, that if a man took the time to inspect all of the machinery, cars, and appliances that he is required to work with, he could not get a job of railroading, or at least he could not retain such a job anywhere in the United States.

Mr. CLAYTON. He would not have much time to do anything else?

Mr. FULLER. No, sir; he would not have any time.

That is the condition, and it is unfair to make a man sign that kind of an agreement, because the man who makes him agree to it knows that he can not live up to it. [Reading:]

37. Do you understand that if you are injured in any manner while in the service of this company, that you will not be allowed to return to the service of the said company, in any capacity, until you have executed a release or made satisfactory settlement with the proper officer? ——— ———. * * *

He has got to release them for every injury before he can return to work, regardless of whether it was the result of their gross negligence or not. [Reading:]

Do you understand that this company does not have all its main tracks, side and spur tracks ballasted or surfaced?

This is evidence of their own guilt. It is the duty of a railroad to have its tracks properly surfaced and ballasted. [Reading:]

39. Do you understand that this company does not have all its main tracks, side and spur tracks ballasted or surfaced, and that the tracks are liable to have slivers on the rail, and that there are open and surface cattle guards and open culverts in the main tracks and in side and spur tracks, of all of which you accept notice and agree to particularly advise yourself thereof and to assume the risk therefrom? ——— ———.

40. Do you understand and agree that no officer or employee of this company is authorized to request or require you to use defective tracks, cars, machinery, or appliances of any kind, except at your own risk of injury therefrom? ——— ———.

They acknowledge that they have that kind of thing, and here they want him to say that nobody is required to use them.

Mr. PEARRE. Do they not thereby give notice to the applicant for employment that these things exist? Do you blame the company for that?

Mr. FULLER. But they acknowledge in this application that nothing is safe, and still they want a man to say that they do not require him to work with anything unsafe.

Mr. PEARRE. Is there anything at all that requires any citizen to become an applicant for employment with a railroad company?

Mr. FULLER. No; there is not; but so long as he lives, and has learned that trade, he naturally wants to follow it. We at one time thought that we had a right to work and quit when we pleased, but in recent years even that has been denied us by Federal judges. But, notwithstanding this, we assume at this time that we have a right to work or quit, and we shall contend for it. I simply cite this to show the advantages taken of the men. You take a man who applies for employment; at that time he is acting alone, and is at a disadvantage with the employer. When he once gets into the employment the bond of union with his fellow employees is formed, and they act in unison, and he is not standing alone. An attempt was made by the Southern Pacific Company to enforce a relief association upon the men a few years ago, and they could not do it. The men would not have it. But when they get each man individually, when he needs the job and is looking for one, of course he is unable to help himself, and he must either sign these contracts or not get employment.

Mr. PEARRE. No man would favor a law just to give authority to railroads to make men work on the railroads, to levy upon the population to get men to work upon the railroads. You would not favor such a law as that?

Mr. FULLER. Undoubtedly we would not favor it.

Mr. PEARRE. I say you would not.

Mr. FULLER. No; we would not. We have been fighting for the last ten or fifteen years to maintain our right to work for whom we please and when we please, but some of our Federal judges seemed to think they ought to tell us when we could quit.

Mr. GILLETT. Have you any decisions of any supreme court that a contract of that kind entered into was a bar to damages for an accident where the employer was guilty of negligence?

Mr. FULLER. I think the decision of the United States Supreme Court in the Voight case came near to it.

Mr. CLAYTON. That contract enumerates every possible danger that may come to the employee during his service on the railroad?

Mr. FULLER. Yes, sir.

Mr. CLAYTON. And your complaint is that if the provisions of that contract, excusatory in their nature, are enforcible against the railroads, there is no possible case in which an employee can recover damages for injury?

Mr. FULLER. Yes, sir.

Mr. CLAYTON. And do I understand you to say that the courts have upheld such a contract as that?

Mr. FULLER. Yes; and I have cited the decision.

Mr. GILLETT. That decision is a little differently made, I think.

Mr. FULLER. In this decision of Voight *v.* Baltimore and Ohio Southwestern Railroad Company——

Mr. ALEXANDER. I have that decision right here, and I will read a half a dozen lines.

Mr. FULLER. I will be glad to have you read it.

Mr. ALEXANDER. Voight, the employee, is the defendant, and the court says:

Voight made application to said express company in writing to be employed by it as express messenger on the railroad of a company, between which and such express company a contract as aforesaid existed, and such applicant, pursuant to his application, was employed by the express company under a contract in writing, signed by him and it, whereby it was agreed between him and the express company that he did assume the risk of all accident or injury he might sustain in the course of said employment, whether occasioned by negligence or otherwise, and did undertake and agree to indemnify and hold harmless said express company from any and all claims that might be made against it arising out of any claim or recovery on his part for any damages sustained by him by reason of any injury, whether such damages resulted from negligence or otherwise, and to pay said express company on demand any sum which it might be compelled to pay in consequence of any such claim, and to execute and deliver to said railroad company a good and sufficient release under his hand and seal of all claims and demands and causes of action arising out of or in any manner connected with said employment, and expressly ratified the agreement aforesaid between said express company and said railroad company. *Held*, that Voight, occupying an express car as a messenger in charge of express matter, in pursuance of the contract between the companies, was not a passenger within the meaning of the case of Railroad Company *v.* Lockwood (17 Wall., 357); that he was not constrained to enter into the contract whereby the railroad company was exonerated from liability to him, but entered into the same freely and voluntarily, and obtained the benefit of it by securing his appointment as such messenger; and that such a contract did not contravene public policy.

Mr. FULLER. I think that substantiates my claim.

Mr. SMITH. That comes very near substantiating what Mr. Fuller said about it.

Mr. FULLER. Just one more clause from this Santa Fe contract, and I will submit the rest without reading it. [Reading:]

41. Do you understand that this company desires to employ only experienced men in its service, and do you state that you are aware of the hazards and dangers of the business, and agree to rely upon your coemployees, and not upon the company, for information as to any or all things, including the character of any kinds of machinery and appliances which would render your work dangerous or subject you to injury, or which may be necessary to the proper performance of your duty; and do you waive any responsibility whatever on the part of the company or its officers touching the matters herein referred to, and that this shall apply to any position to which you may now or hereafter be assigned?

Mr. Chairman and members of the committee, the common-law rule, without any statutory enactment at all, requires or puts the duty upon an employer to make his employee acquainted with the conditions under which he is to work and to warn him of dangers, and so forth. In this application the whole burden of responsibility is shifted onto the employee and his fellow-workmen. They want him to depend upon his own information and what he gets from other employees as to his safety and as to all things, as it plainly states.

I will say that while the Supreme Court has upheld these contracts, the courts have held that they could be declared void by statute. Take, for instance, O'Brien *v.* The Chicago and Northwestern Railroad Company (Fed. Rep. Dig. Cols., 1464, 1476). If my

memory serves me right, that case came up in Iowa, and I think was decided by Judge Shiras.

So much for the contract of employment. And in addition to this, several roads in the country operate what are known as relief departments. Some of them carry the misnomer "voluntary," but in effect they are compulsory. One road in particular that I know of makes no bones about requiring its employees to join, about saying that its employees have got to join this association in order to get employment, notwithstanding the fact that it is contrary to law to do so. These relief departments are operated in this way: The company makes the man agree in most cases before he gets employment to join the relief department. Some of them tell him in so many words that he has got to do it. He does not get employment unless he does. Others go about it in a different way, but the effect is the same. When he comes up and asks for employment he does not ask for any membership in a relief department, but they hand him, along with his application for employment, an application to go into the relief department, and if he does not agree to go into it, why, he does not pass the medical examination, or something of that kind. He does not get the job, as a rule.

To briefly state it, these relief departments are operated in this way: A man in his application has to agree to let the company keep out of his wages a certain amount every month. He has to agree to that, but they call it a "contribution." I always supposed that a contribution was what came from a man's pocket of his own free will; but they used the word "contribution" in this case because it looked better. But its application in this case was so extraordinary that they had to in their rules go to work and define what "voluntary" means, and their definition to a man who understands it means "compulsion." He must agree to do it. He agrees in that application that in consideration of the company's agreeing to make good any shortage in the fund from which he is to receive benefits that upon acceptance of those benefits he will release the employer from all liability for his injury.

Prof. Emory Johnson, of the University of Pennsylvania, who was also in the employ of the United States Industrial Commission, and, I believe, prepared a large part of the matter for one of their reports, testified before the Commission that he had made an investigation of these relief associations, and he found that the employees contributed between four-fifths and five-sixths of the money which went to make up these funds. That is a little over 80 per cent, if I am right.

Now, a man enters the employment. He pays them this money or gives them authority to keep it out of his wages. They build up a fund, and he and his fellow-employees pay over 80 per cent of it, and if he gets injured, he has already signed an agreement that if he brings suit he releases the relief department. He can not get anything out of that. If he chooses to take money out of the relief department, according to its laws—so much per day, for instance, when he is off duty—then he can not sue, and then and there signs the agreement that he will not sue, and waives all rights. It matters not which way a man decides, he is either stripped of the money he has put into the relief or he is deprived of his legal rights in the courts. And I do not think that is a fair proposition.

It has been argued before committees of State legislatures that the employees were in favor of these relief associations, and in States where there have been attempts made to legislate against them the companies have always been able to get some employees to go there and oppose the bills. In preparing my argument for the industrial commission on this subject I decided I would not rely on any information that I had received in an offhanded way, but that I would put myself in communication with the men on these roads which had these departments and who were members of them. And I did. I communicated with men all along the Pennsylvania Railroad and the Baltimore and Ohio Railroad and got their views, and I have a copy of my statement to the commission here, and I will submit it to the committee. It shows that nearly 100 per cent of those men say that in their opinion the objects of those relief associations are not benevolent, but that they are for the purpose of alienating the men from the labor organizations, and for the purpose of relieving the companies of liability for injuries. Practically 100 per cent agree to that. I submitted several questions to them, and their answers are all arranged by tables here, and they show that while the companies claim that these associations are voluntary they are really compulsory.

I will just quote two or three of the letters that I got. Here is a letter from an employee of the Pennsylvania Railroad:

"PENNSYLVANIA RAILROAD,
"WEST JERSEY AND SEASHORE DIVISION,
"*Woodbury, N. J., March 20, 1900.*

"*To all Foremen, Salem Branch and Bridgeton Branch:*

"You will arrange to increase your force April 1, one (1) more laborer, making a total of three (3) laborers, at 12 cents per hour. Condition of employment of this man is that he join the relief fund; also give their full names.

"Yours, truly,

"——— ———, *Supervisor.*"

Here is another one:

"PENNSYLVANIA RAILROAD,
"WEST JERSEY AND SEASHORE DIVISION,
"*Woodbury, January 30, 1900.*

"S——— ———.

"DEAR SIR: I think by this time you have been able to judge if ——— will suit you in the gang.

"Please get him to join the relief fund at once. If he will not, get another man that will.

"Yours, truly,

"——— ———, *Supervisor.*"

These are samples. The Pennsylvania Railroad claims that it is voluntary. Mr. Cowan, president of the Baltimore and Ohio Railroad Company, stated to the Industrial Commission that if a man would not join the relief he did not get his job.

Now, I want to call your attention to the fact that Congress has already legislated against these reliefs. The national arbitration law of June 1, 1898, has this provision, and this law was passed before these supervisors sent those letters to the men saying that they must get the men into the relief or they would not be employed:

That any employer subject to the provisions of this act, and any officer, agent, or receiver of such employer * * * who shall require any employee or any person seeking employment, as a condition of such employment, to enter into a contract whereby such employee or applicant for employment shall agree to contribute to any fund for charitable, social, or beneficial purposes, to release

such employer from legal liability for any personal injury by reason of any benefit received from such fund beyond the proportion of the benefit arising from the employer's contribution to such fund, * * * is hereby declared to be guilty of a misdemeanor.

This act was cited to President Cowan, of the Baltimore and Ohio Railroad, when he appeared before the Industrial Commission. He said, "That law does not affect us." But the Commissioners thought that it did, and they said, "Do you not think, as a lawyer, so long as it is a law there, and has not been declared unconstitutional, you ought to live up to it?"

He said: "No. The only way you could find whether a law was unconstitutional or not would be to violate it." So they have been violating it, and the Baltimore and Ohio Railroad makes no bones about it. The Pennsylvania Railroad has been a little smoother, but the truth comes to light. They are sure to get the employees of the most hazardous occupations in these departments, because there is where the most damage suits arise; and there was a time when section men did not have to join, but they are now after them. I have here a clipping from the Pittsburg Post of July 18, 1905. It reads as follows:

Get laborers into relief. A systematic campaign to get the foreigners employed on the section and other laboring gangs of the Pennsylvania lines west into the voluntary relief department has been inaugurated. Special employees of the relief department are rounding up the foreigners and sending them to the medical examiners' office. The move is for the purpose of increasing the membership of the relief. Road men are practically compelled to be members, but heretofore the maintenance of way employees have been allowed more option. Several hundred examinations for new memberships are being made weekly, and a large percentage of those examined are enrolled.

Here is another clipping from the same paper a few months later. I suppose this was after they "rounded" them up. It reads:

Accessions to the membership of the voluntary relief department of the Pennsylvania lines east of Pittsburg and Erie during the summer have brought the total up to a higher figure than ever before in the history of the organization, which had its inception February 15, 1886.

There is no doubt that these roads are openly violating the law of Congress to-day. Other States which have legislated on this question have passed provisions in the legislation providing that these contracts are illegal.

To show you that the object of these relief contracts is not to benefit the employees, several years ago in the State of Iowa what is known as the Temple amendment was proposed there, and it sought to make these contracts illegal; and I guess there has never been a worse fight in the State over a piece of legislation in recent years than there was there. The employees contended for it during two sessions of the legislature, and it was finally adopted, and what we are asking you to do in this bill is practically what Iowa did.

Mr. PALMER. How much money do they pay out every year for relief?

Mr. FULLER. I do not know about that. I do not know how much.

Mr. PALMER. Do they not publish some kind of a statement?

Mr. FULLER. Yes, sir; they do. In the various newspapers they tell how much the relief has paid out, but they do not tell how much has been taken in. The railroad is given all the credit, notwithstanding it pays less than 20 per cent of it.

In addition to that, it is my understanding that the superannuation payments of the Pennsylvania Railroad are taken out of this fund.

Mr. PALMER. What do you mean by the superannuation fund?

Mr. FULLER. They retire old employees.

Mr. PALMER. Pay them something as long as they live?

Mr. FULLER. Yes, sir.

Mr. CLAYTON. They pay them an annuity, do they not?

Mr. FULLER. They give them some money that they and their fellow-employees have laid up.

Mr. PALMER. That is more in the nature of and analogous to insurance, is it not?

Mr. FULLER. If they leave the service of the company at any time they are not entitled to any benefits. They can not even be a member of the relief if they leave the service.

Mr. TIRRELL. Is there not some special stipulation as to how much the railroads shall pay in and how much the men shall pay in to make this fund?

Mr. FULLER. Here is the way it is done: They agree that when a man is injured they will allow him so much a day for the time he is disabled from duty, and he is to pay a certain amount per month to entitle him to it. It is said by the company that the money he and his fellow-employees pay in does not quite meet the expenses of this fund, and the company agrees to make good the deficiency, and through that agreement the courts have held that they can be relieved from the liability.

Mr. ALEXANDER. Has any legislation in any State gone as far as your section 3?

Mr. FULLER. Yes, sir; I believe, several States. I recall Iowa and South Carolina. South Carolina goes further.

Mr. ALEXANDER. You need not refer to it. I simply asked you the question.

Mr. FULLER. This bill of ours simply says this:

That no contract of employment, relief, benefit, insurance, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however,* That upon the trial of such action against any such common carrier by railroad the defendant may set off therein any sum it has contributed toward any insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his heirs at law.

By the way, the words "personal representative" ought to go in there instead of "heirs at law," as they did in the other place.

Mr. SMITH. Why do you put "personal representative" in there?

Mr. FULLER. We have been advised that it is the proper term.

Mr. GILLETT. Many of the States use both.

Mr. SMITH. The personal representative is the person who qualifies as the legal representative of the estate of the deceased.

Mr. FULLER. I understand that to be the "legal representative." This is "personal representative."

(The statement of Mr. Fuller was interrupted at this point to allow Mr. Gompers to address the committee.)

STATEMENT OF MR. SAMUEL GOMPERS.

The CHAIRMAN. Please give your address to the stenographer.

Mr. GOMPERS. 423–425 G street, Washington, D. C.

The CHAIRMAN. Proceed, Mr. Gompers.

Mr. GOMPERS. At this time, Mr. Chairman and gentlemen, I simply desire to express for the organization which I in part represent—the American Federation of Labor—our hearty indorsement of the bill which is under consideration by the committee, and which has been so splendidly defended by Mr. Fuller of the railway organizations.

It was my intention at the appropriate time to ask the indulgence of the committee to say something in support of the bill, but because of its able presentation and defense by Mr. Fuller, as well as the fact, that must be patent to you, that I am suffering from a very severe cold, I would prefer not to say more than a word or two in support of the bill at this time, reserving for some later date, if circumstances may require it and it shall meet with the will of the committee, any further statement that I want to make.

Let me say this in connection with the principle of the bill: Neither the men on the roads nor the men who are making application for employment on the roads want the employers' money for damages for injury. They do not want the employers' money to go to the families of injured or killed workmen. But what we want is that the penalizing of these employers shall be sufficient warranty for them to take that precaution for the protection of life and limb; and wherever there has been any law upon the statute books that has tended toward this species of legislation, it has resulted not so much in mulcting the employers in damages as it has in a marked decrease of accidents and deaths.

A question was asked of Mr. Fuller, and I can apprehend that by reason of his desire to complete his argument in the shortest possible time he may not have had the opportunity to present his answer. That is the question as to an employee accepting employment under conditions prescribed in applications of the sort that Mr. Fuller has read to you. We, too, assume that it is not necessary for him to have taken that employment; and as has been read to you, the court by a decision, an opinion, held that the entering into such an agreement by a workman that receives the appointment and employment and wages was a consideration upon which he entered into the employment and was a bar against a suit or securing damages in a suit. Of course it is not essential for him to enter into such an agreement. But the man who has, as Mr. Fuller stated, learned one trade or calling or vocation and finds that if he declines to enter into an agreement as a condition precedent to his employment because the terms are repugnant to him and his interests, and for that reason does not enter into such employment, finds himself without employment and goes elsewhere and finds the same condition confronting him, that he must sign an agreement of the same sort or enter into some arrangement equally binding and surrendering the rights of his heirs. It is very easy for those of us who may be so placed and so conditioned in life that we can, if one sort of employment does not suit our interests or convenience or tastes, to change it. But it is quite different when the matter applies to the wage-earner, who has to sign an agreement of

12 cents an hour for his wages and who must accept work, hazardous, dangerous work, for long hours—ten hours a day—at the munificent figure of 12 cents an hour, and then voluntarily joins one of these associations that mulcts him every pay day in order that he may by his own act create a bar against himself or his making a claim upon the employer for gross negligence.

Yes; of course the company, the employers, have no right to levy upon the population for their employees. But when the courts deny the right of workmen to take action to defend their rights and in effect declare that there is some sort of property right that a company has in the labor of its employees, then there is still another phase of that question, and it throws another light upon it. I believe with Mr. Fuller as to the provision of this bill which specifically states that the matter of contributory negligence shall be determined by the jury. Apart from the general declaration that matters of this sort shall be determined by the jury, it will be a specific direction to the judges that the purpose of that provision in the law is that the judge shall not determine the question of fact, but that it shall be left, and must be left, to the jury.

I can not continue any longer, and I suppose that I have already taken my five minutes, and if the circumstances should warrant and you will grant it, I trust that I may have the privilege of again addressing the committee upon this subject.

(At this point the committee went into executive session, at the conclusion of which the committee took a recess until 2 o'clock p. m.)

AFTERNOON SESSION.

The committee met at 2 o'clock p. m., pursuant to the taking of recess, Hon. John J. Jenkins (chairman) in the chair.

The CHAIRMAN. Mr. Fuller, are you ready to continue your argument?

Mr. FULLER. Yes, sir.

STATEMENT OF MR. H. R. FULLER—Continued.

Mr. FULLER. Expecting the opponents of this bill to follow the course which they have previously followed before legislative committees in claiming that membership in these relief associations is not compulsory, I want to add a little more on that subject. Prof. Emory Johnson, of whom I spoke before this morning, in his testimoney before the Industrial Commission made this statement:

* * * A prominent official of an important railway corporation told me in a confidential conversation that he did not care whether the membership in relief associations was compulsory or not. At that time his railway made membership in his association compulsory; but he stated that he did not care whether it was compulsory to join the association or not, for the reason that the indirect pressure that the corporation could bring to bear would accomplish the same result.

After making this statement he was asked this question: "Did they force the employees?" To this question he answered: "Yes."

I have here a copy of the application of the Baltimore and Ohio relief department at that time, and I will read a small portion of it:

I, ——— ———, of ———, in the county of ——— and State of ———, desiring to be employed in the service of the Baltimore and Ohio Railroad Company as ——— in the ——— department, ——— division, do hereby, as one of the conditions of such employment, apply for membership in the relief feature,

and consent and agree to be bound by all the regulations of the relief department now in force and by any other regulations of said department hereafter adopted applicable to the relief feature.

That shows conclusively, Mr. Chairman, that no matter what they may name these relief associations, membership in them is compulsory.

A few years ago, after the fight in Iowa in which the Temple amendment passed, the Pennsylvania Railroad got rather solicitous about its relief association, and they had introduced in the Indiana legislature a bill to legalize these relief associations.

Section 3 of the bill read as follows:

SEC. 3. In case of personal injury to any employee or of his death while a member of any such relief department and entitled to benefits, he or his beneficiary named in the application for membership may accept the benefits from the relief fund in lieu and in bar of any damages resulting from such injury or death, and the acceptance of benefits from the relief fund to which such employee or his beneficiary is entitled by reason of membership in the relief department shall be a valid defense to any action for damages resulting from such injury or death, but nothing contained herein or in any contract of such employees shall operate to deprive him or his representatives of his or their right of action for damages resulting from such injury or death if such employee or his beneficiary does not accept the benefits from such relief fund.

Mr. SMITH. What became of that?

Mr. FULLER. I will finish that. Our representative looking after the interests of the railroad men at Indianapolis states that this bill was drawn by the attorney of the Pennsylvania Railroad in that city. The bill was introduced by Senator Hogate. It went before a committee, and the committee struck out that section and they reported favorably on its passage without that section, and the Senator who introduced it got up and moved to strike out the enacting clause of his own bill.

I had a report of our own legislative committee on that, but I wanted it from some other authority, and I wrote to the secretary of state of Indiana, and I want to read you his answer. This is very short:

INDIANAPOLIS, IND., *March 12, 1900.*

H. R. FULLER, *Washington, D. C.*

DEAR SIR: Replying to your favor of March 10, I beg to say that senate bill No. 335 was introduced into the general assembly by Hon. Enoch G. Hogate, a Republican senator. On February 24, 1899, the bill was called up by Mr. Hogate and read a third time by sections. Senator Minor, a Democrat, made the following motion:

"I move you that senate bill No. 335 be referred to a committee of one and amended by striking out all of lines 11 and 12 after the word 'death,' in section 3," which motion prevailed.

Senator Morris Winfield, a Democrat, from the district composed of Cass and Pulaski counties, made the following motion:

"I move you that senate bill No. 335 be amended by reference to a committee of one, its author, with instructions to strike out section 3," which motion prevailed, on a decision whereon 21 senators voted in the affirmative and 13 senators voted in the negative.

The bill as amended did not meet the approval of Senator Hogate, who thereupon moved to strike out the enacting clause, which motion prevailed. If there is any blame to be attached to either party for the defeat of this bill, it can only be attached to the Democratic party.

Very truly, yours,

UNION B. HUNT, *Secretary of State.*

All of what they claimed was the purpose of the legislation—what *they claimed out openly* as its purpose—was retained in the bill; but

when the pith of it was gone they did not want it. That was to release them from liability.

In regard to the management of these relief funds, the rules governing them were so fixed when they were adopted that the company should have a majority of the managing boards, and those laws also provided that appeals should be made to certain boards which were so composed that the majority of the members were representatives of the company. It is impossible to amend the laws of these departments so as to give the employees the controlling right, and of course the company did not intend that they should have it; and the men have to accept the laws as practically laid down by the companies in regard to this matter.

It is true, I believe, that if the employees had the representation on these boards according to the stock—if I may use that term, to make the argument more forcible—that they hold, or according to the amount that they contribute to the fund, it is very reasonable to suppose that their interests would be looked after; but the laws are such that the company perpetuates its control of these associations. If there ever was a case of the tail wagging the dog, it is the case in the management of these relief associations.

The proviso in section 3 of this bill provides:

That upon the trial of such action against any such common carrier by railroad the defendant may set off therein any sum it has contributed toward any such insurance, relief, benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his personal representative.

That proviso gives back to the company every cent it puts into the fund, and I say I do not think any man who believes in fair play can consistently ask for any more. We are willing they shall get back every cent they have paid in, but we are not willing that they shall take the hard earnings of the men I represent.

I have here a list of several foreign countries and States which have passed legislation right along this line, forbidding the companies to release themselves under these contracts of employment and insurance; but I will not take your time to read them.

Mr. CLAYTON. They can be printed in the hearing.

Mr. FULLER. I would be glad to submit them to the committee.

GERMANY.

The German employers' liability act of 1871 provides that—

"The employers designated in sections 1 and 2 of this act are not permitted to make any special contracts whereby the application of the preceding sections 1 to 3 of this act shall be abrogated or limited to the benefit of said employers.

"Contracts contrary to the preceding paragraph have no legal validity."

DENMARK.

The insurance law of Denmark contains this provision:

"Agreements between employers and workmen which tend to the nonobservance of the provisions of this law, or which provide for the payment on the part of the workman of the insurance premium, or of any fraction of the same, are null and void."

ITALY.

Section 12 of the Italian law reads as follows:

"Every agreement designed to free the undertaker from the payment of compensation or to diminish the amount fixed by the provisions of section 9 is null and void."

SPAIN.

The Spanish law reads:

"Every renunciation of the privileges granted under this act is null and void; likewise all agreements contrary to these provisions."

SWITZERLAND.

Section 12 of the Swiss law of 1875 reads as follows:

"Regulations, notices, or special agreements whereby the responsibility for damages under the provisions of this act are limited or abrogated have no legal validity."

Several of our own States have declared these contracts void.

The following are quotations from several of our State laws:

WISCONSIN.

"And no contract, rule, or regulation between any such corporation and any agent or servant shall impair or diminish such liability. No contract, receipt, rule, or regulation between any employee and a railroad company shall exempt such corporation from the full liability imposed by this act." (Wisconsin Acts, 1893, ch. 220.)

MISSISSIPPI.

"Any contract or agreement, express or implied, made by any employee to waive the benefit of this section shall be null and void." (Mississippi Constitution, sec. 193; also, Annotated Code, 1892, sec. 3559.)

TEXAS.

"No contract made between the employer and employee, based upon the contingency of death or injury of the employee, limiting the liability of the employer under this act, or fixing damages to be recovered, shall be valid and binding." (Texas Revised Statutes, 1895, sec. 4560.)

IOWA.

"And no contract which restricts such liability shall be legal or binding. Nor shall any contract of insurance, relief benefit, or indemnity in case of injury or death, entered into prior to the injury, between the person so injured and such corporation, nor shall the acceptance of any such insurance, relief benefit, or indemnity by the person injured, his widow, heirs, or legal representatives after the injury, from such corporation, person, or association constitute any bar or defense to any cause of action brought under the provision of this section; but nothing contained herein shall be construed to prevent or invalidate any settlement for damages between the parties subsequent to injuries received." (Iowa Code, 1897, sec. 2071.)

MINNESOTA.

"And no contract, rule, or regulation between such corporation and any agent or servant shall impair or diminish such liability." (Minnesota General Statutes, 1894, sec. 2701.)

FLORIDA.

"No contract which restricts such liability shall be legal or binding." (Florida Revised Statutes, 1892, sec. 3.)

VIRGINIA.

"Any contract or agreement, express or implied, made by any such employee to waive the benefit of this section, or any part thereof, shall be null and void." (Virginia Acts, 1901–2, ch. 322.)

ARKANSAS.

"No contract made between the employer and employee based upon the contingency of the injury or death of the employee limiting the liability of the employer under this act, or fixing damages to be recovered, shall be valid and binding." (Arkansas Digest, 1894, sec. 6250.)

SOUTH CAROLINA.

"Any contract or agreement, express or implied, made by an employee to waive the benefit of this section shall be null and void." (South Carolina Constitution, sec. 15.)

In 1903 the legislature passed the following act:

"From and after the approval of this act, when any railroad company has what is usually called a relief department for its employees, the members of which are required or permitted to pay some dues, fees, moneys, or compensation to be entitled to the benefits thereof, upon the death or injury of the employee, a member of such relief department, such railway company [shall] be, and is hereby, required to pay to the person entitled to same the amount *It was agreed the* employee or his heirs at law should receive from such relief

department; the acceptance of which amount shall not operate to estop or in any way bar the right of such employee, or his personal representatives, from recovering damages of such railroad company for injury or death caused by the negligence of such company, its agents or servants, as now provided by law; and any contract or agreement to the contrary shall be ineffective for that purpose." (South Carolina Laws, 1903, act 46.)

MISSOURI.

"No contract made between any railroad corporation and any of its agents or servants, based upon the contingency of the injury or death of any agent or servant, limiting the liability of such railroad corporation for any damages under the provisions of this act, shall be valid or binding, but all such contracts or agreements shall be null and void." (Missouri Acts, 1897, sec. 4.)

NORTH CAROLINA.

"Any contract or agreement, express or implied, made by any employee of said company to waive the benefit of the aforesaid section shall be null and void." (North Carolina Acts, 1897, Vol. II, ch. 56, sec. 2.)

NORTH DAKOTA.

"And no contract, rule, or regulation between such corporation and any agent or servant shall impair or diminish such liability." (North Dakota Acts, 1899, ch. 129, sec. 1.)

MASSACHUSETTS.

"No person or corporation shall, by a special contract with persons in his or its employ, exempt himself or itself from any liability which he or it might be under to such person for injuries suffered by them in their employment and which result from the employer's own negligence or from the negligence of other persons in his or its employ." (Massachusetts Acts, 1894, ch. 508, sec. 6.)

Chapter 270 of the Massachusetts Acts of 1887, as amended by chapter 155 of the Acts of 1888, chapter 260 of the Acts of 1892, chapter 359 of the Acts of 1893, and chapter 499 of the Acts of 1894, also contains the following provision:

"Any employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries for which compensation may be recovered under this act, or to any relief society formed under chapter 244 of the acts of the year 1882, as authorized by chapter 125 of the acts of the year 1886, may prove, in mitigation of the damages recoverable by an employee under this act, such proportion of the pecuniary benefit which has been received by such employee from any such fund or society on account of such contribution of said employee as the contribution of such employer to such fund or society bears to the whole contribution thereto."

INDIANA.

"All contracts made by railroads or other corporations with their employees, or rules or regulations adopted by any corporation releasing or relieving it from liability to any employee having a right of action under the provisions of this act, are hereby declared null and void." (Indiana Annotated Statutes, 1894, sec. 7087.)

OREGON.

"Any contract or agreement, express or implied, made by any such employee to waive the benefit of this section, or any part thereof, shall be null and void." (Oregon act approved Feb. 10, 1903.)

NEW YORK.

"An employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries for which compensation may be recovered under this act, or to any relief society or benefit fund created under the laws of this State, may prove in mitigation of damages recoverable by an employee under this act such proportion of the pecuniary benefit which has been received by such employee from such fund or society on account of such contribution of employer as the contribution of such employer to such fund or society bears to the whole contribution thereto." (New York Laws, 1902, ch. 600.)

GEORGIA.

"All contracts between master and servant made in consideration of employment, whereby the master is exempted from liability to the servant arising

from the negligence of the master or his servants, as such liability is now fixed by law, shall be null and void as against public policy." (Georgia Laws, 1895, sec. 1, act 184.)

NEW MEXICO.

"And any contract restricting such liability shall be deemed to be contrary to the public policy of this Territory, and therefore void." (New Mexico Compiled Laws, 1897, sec. 3216.)

ALABAMA.

Although the Alabama law contains nothing in regard to these contracts of employment, the supreme court of that State in 1890 decided that such contracts were opposed to public policy and did not secure to the railroad company, in whose interest the stipulation in the contract has been made, exemption from statutory liability.

KANSAS.

A similar decision was rendered by the supreme court of Kansas in 1893.

PORTO RICO.

"Any employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries for which compensation may be recovered under this act, or who has insured the said employee in any insurance company against the accidents of labor, shall be entitled to have deducted from the sum which he shall have to pay as compensation under the provisions of this act the amount that shall have been received by the person injured, or by his widow or children, or both of them, or by the parents, if there be no such widow and children, from the aforesaid fund or from the insurance company by reason of the same accident." (Porto Rico Revised Statutes, 1902, sec. 330.)

According to the last report of the Interstate Commerce Commission there were 2,114 trainmen killed and 29,275 injured on the railroads of the United States, men who were injured in the transportation of interstate commerce over which this Congress and this committee have absolute control. This report also shows that for every 120 men employed 1 was killed, and for every 9 employed 1 was injured.

Mr. Chairman, there are more men killed on the railroads in one year than there were in some of the greatest battles that were ever fought for the honor of this country, and I say to you there is no class of men who are more loyal to the Government of the United States than the railroad men of this country.

We think that if the railroads were held to a strict accountability for the loss of life and limb of their employees the number of injured and killed would be diminished. Such has been the history of this legislation in other countries. In the debates on the English compensation act in the House of Lords Lord Salisbury had this to say:

To my mind, the great attraction of this bill is that I believe it will turn out a great machinery for the saving of life. This is the real history of this law of compensation. The law of compensation at the beginning of the century was taken up by the juries, and instead of compensation for the real injury incurred being given, it was used by them as a punitive instrument to force these great owners and railway companies to strain their efforts to the utmost in avoiding and preventing the accidents, which at one time were so numerous. It has been very successful, as far as regards the ordinary passenger or ordinary citizen, but the law of common employment has damaged its efficacy as regards the workingman. (Hansard, Parliamentary Debates, 1897, vol. 51, p. 555.)

Speaking on the whole proposition of employers'-liability legislation, we find that our National Government is behind at least sixteen foreign countries and a majority of our own States. When we compare this legislation of kingdoms and monarchies with the

cold, rigid application of the common-law rule by our Federal judges, it is not too much to say that the United States Government has not, on this question at least, been as watchful of the interests of its workingmen as it might have been.

Statistics show the efficiency of the American workman to be far above that of the workmen of other countries, and it is greatly due to his intelligence and skill that we are now entering the markets of the world.

Statistics also show that it takes 13 men to operate a mile of railroad in England, while it only requires 5 in America.

And why, then, may I ask, is not the American workingman entitled to as much consideration at the hands of a legislative body which, by virtue of its power over interstate commerce, is really the body that should legislate upon this question?

Mr. PALMER. What is the English compensation act?

Mr. FULLER. It is an act which requires companies to compensate their employees for injuries. Their employees, however, contribute in some degree to it.

Mr. PALMER. Is there a limit on the amount to be paid?

Mr. FULLER. Yes; there is; and in the report that I spoke of this morning there is a table showing it all, and I would be glad to take that table—it covers only one sheet, probably a couple of sheets about the size of that [indicating paper]—and include it in my remarks.

The CHAIRMAN. And make it a part of this hearing?

Mr. FULLER. Yes, sir.

The CHAIRMAN. Before you get through I want to see whether I understood you this morning in regard to your position as to the duties of the judges in the trial of negligence cases. I do not want to do you any injustice, but I want to clearly understand it. Is it your contention that the judge should not have any voice in saying whether or not there is any right of action, as to whether there is any evidence in favor of the plaintiff?

Mr. FULLER. Oh, no.

The CHAIRMAN. What did you mean, then, when you said that the judge should not interfere, and that the case ought to go to the jury in a negligence case?

Mr. FULLER. I said this—I meant to say it, at least—that I understood questions of contributory negligence to be questions of fact, and that it was the duty of the jury to pass upon questions of fact rather than the judge. It has been stated by some authorities that a judge might consider a question of contributory negligence a question of law and take it away from the jury, provided it was so plain that there was no possibility of reasonable minds disagreeing on it.

The CHAIRMAN. That is practically correct.

Mr. FULLER. Yes, sir; but these cases have been appealed to higher courts, and there are many of them in the eighth circuit in which there are dissenting opinions, stating that the facts are such that the case should have gone to the jury, and that of itself shows that all reasonable minds do not agree. It shows that it was so strongly a question of fact that it should have been left to the jury.

The CHAIRMAN. It only becomes a question of law when the facts are not disputed.

Mr. FULLER. The point that I want to make is this, that the judges in the trial courts have assumed that the evidence was so strong of contributory negligence that there was no necessity of submitting

the case to the jury. They went on the theory that all reasonable minds would agree to this; but in those very cases, when they went on appeal to another court which was composed of several judges, there were dissenting opinions rendered. The justices divided on that point. And that is of itself enough to show that all reasonable minds did not agree that the evidence of contributory negligence was so strong that the case should have been taken away from the jury.

The CHAIRMAN. Is it your contention that this bill will regulate the question?

Mr. FULLER. Yes, sir; we think it will, as amended. Questions of negligence, which we think, and our attorneys have so advised us, are questions of fact, should be submitted to the jury.

I do not want to be understood as speaking especially against the judiciary. They are a part, and a most important part, of our Government. But I believe our position can be well appreciated when we argue nothing more than do other people, that we believe in each coordinate branch of the Government and each part of the court performing its own function only, and we believe in this case the judges have encroached upon the rights of the jury.

Mr. BRANTLEY. I understood you to say a while ago that the United States Government was behind a majority of the States in this kind of legislation. I understood from that that a majority of the States had similar legislation to this?

Mr. FULLER. Yes, sir.

Mr. BRANTLEY. Now, if all of them had it, would there be any necessity for your bill, except as to the District of Columbia and the Territories, and is not the purpose of your bill to force upon the minority of these States legislation that they themselves have not been willing to enact?

Mr. FULLER. No; I can not say "yes" to that. We do not want to force anything on anybody. We are too small to force. I do think this, however——

Mr. BRANTLEY. You could not force it, of course, but Congress could. I used the term "force" in reference to Congress.

Mr. FULLER. I do say this, that I believe it would be a very good example for Congress to pass this law, and I believe that the result would be to make legislation uniform throughout the States.

Mr. BRANTLEY. Could not Congress make an example by passing this law for the District of Columbia and the Territories, over which it has plenary power? If all the States adopted this law for themselves, this bill would not be necessary, except for the District of Columbia and the Territories.

Mr. FULLER. I would say that it is a condition and not a theory which confronts us. There are States, like the State of Pennsylvania, for instance. In the State of Pennsylvania I myself, with other men, have been laboring for the last twenty years to get legislation of this kind; but it is an impossibility to do it, and I do not think it is necessary for me to state here the reason why. There are other States where the same influences control—not to so great an extent, probably—but it is absolutely an impossibility to get any legislation of this kind. We can not get them even to follow the example of Congress with regard to the safety-appliance law in some of the States, and so far as getting all of the States to pass legislation goes, I do not expect that any of us will live to see it, unless the legislatures are controlled by different influences than they have been.

Mr. BRANTLEY. Let me ask you this question: Suppose you passed this bill; then in the State of Pennsylvania, for instance, the State not having enacted any law of this kind, you would have one rule for liability in interstate commerce and another rule of liability for employees on railroads engaged strictly in intrastate business. You would have two rules in that State?

Mr. FULLER. We would have two rules in that State even if there was legislation, so far as the two different classes of commerce are concerned. This bill can only apply to the interstate commerce where the State-made law would apply to State commerce, and we would have two rules anyhow.

Mr. BRANTLEY. Are not the laws of the State enforced in the Federal courts?

Mr. FULLER. Yes; that is true. But so long as Congress has not legislated upon the question, as I am informed, upon the question of interstate commerce, the States may legislate in a way that may affect and regulate even interstate commerce. But just as soon as Congress legislates upon that question then the Federal rule and the Federal law must prevail; the State law has got to give way to it. Supposing Congress passes this law and we have a case arising in a State in which there is a similar law. If the man is injured in State commerce he has the State law. If he is injured in interstate commerce it seems to me it is very clear that the law of Congress must prevail in that case.

Mr. BRANTLEY. But if the laws were the same, the rule of law would be the same.

Mr. FULLER. Oh, yes; I think there would be nothing better than to have a uniformity of law on this subject. And I think this, if Congress passes this legislation, and in the form it is in, it makes it as good as the law in any State, and that we surely want, because we do not want to take away anything that any employees have in any State. And unless Congress does pass as good legislation on all of these rules in regard to employers' liability, as there are in the various States, then the employees in those States will be deprived of some rights. Since the national safety-appliance law was passed we have copied from that law in our efforts to get State legislation; and for this reason: When a man gets injured, or where a railroad company does not comply with the law, we want to be able to plead both State and national laws. In that case we would probably not be compelled to show interstate commerce was involved.

Mr. PALMER. I do not understand. Do you mean whether there was anything on the train being carried into some other State?

Mr. FULLER. Yes, sir.

Mr. PALMER. That question arises?

Mr. FULLER. Yes, sir. You have got to prove that it was interstate commerce before the act of Congress can apply.

Mr. PALMER. In the State in which the man is injured, or the supposed violation occurs, it is not a violation until it is proved contrary to some law?

Mr. CLAYTON. The violation or alleged violation.

Mr. FULLER. Alleged violations. The safety-appliance act does not apply. What we would like, and what has been our effort, is to carry into legislation in the States word for word the safety-appliance law of Congress, so that no matter what the conditions may be when the case comes up, whether it was interstate or intrastate commerce,

the road is liable. Illinois did that thing last year. The Illinois legislature passed last year word for word the present national safety-appliance law, so that in Illinois when a case comes up in regard to safety appliances it does not matter whether it is State commerce or interstate commerce, the company has got to answer for it. And that would be the case with employers' liability. We would seek to have all the States legislate the same as Congress has legislated, and bring about uniformity.

Mr. Chairman, I have taken up more time now than I intended to, and I will only ask your indulgence for a few minutes more.

Mr. STERLING. I presume it would be only necessary to prove that the railroad company was doing a general interstate-commerce business. It would not be necessary to prove that the particular train on which the injury occurred was engaged in carrying commerce from one State to another?

Mr. FULLER. I will say this: We would be very glad to have that interpretation; and the last amendment to the safety-appliance law does say that it affects the carrier that is engaged in interstate commerce. The point has not been decided in the Supreme Court yet. I do not believe there has been a case brought under that decision. But there is this about it. When employers or railroads want injunctions from the Federal courts to restrain their employees from leaving the service they do not bring proof that those employees are engaged altogether in interstate commerce. They simply make the statement that they are carriers engaged in interstate commerce, and the injunctions do not say that you shall not do this and that as affecting the interstate commerce. They do not differentiate in the injunctions or separate interstate commerce from State commerce. They issue a blanket injunction, and if you violate it you get hauled up just as quick if it is not interstate commerce as if it were.

That brings to my mind the famous Lennon case, in which Judge Ricks enjoined the Lake Shore Railroad for refusing to do certain things—to handle Ann Arbor cars. Lennon quit the service rather than handle an empty Ann Arbor car. There was not a pound of any kind of commerce in it, not a pound, but he paid the penalty, and that case came to the Supreme Court of the United States. Now, I submit, it is a poor rule that will not work both ways.

The great work of social reform in the German Empire was initiated by the message of His Majesty the Emperor William I to the Reichstag on the 17th of November, 1881. This message, as communicated by the imperial chancellor, Prince Bismarck, reads as follows:

> We consider it our imperial duty to impress upon the Reichstag the necessity of furthering the welfare of the working people. We should review with increased satisfaction the manifold successes with which the Lord has blessed our reign, could we carry with us to the grave the consciousness of having given our country an additional and lasting assurance of internal peace, and the conviction that we have rendered the needy that assistance to which they are justly entitled. Our efforts in this direction are certain of the approval of all the federate governments. We confidently rely on the support of the Reichstag, without distinction of parties. In order to realize these views a bill for the insurance of workmen against industrial accidents will first of all be laid before you.

I submit this, Mr. Chairman, for the purpose of showing the importance with which this great question of compensation for industrial accidents was viewed by a ruler whose subjects were seeking

various industrial reforms. He put this above all others, and I also want to suggest and commend the spirit in which the Emperor submitted this message to the legislative branch of his Government. It brings to one's mind the truth that a nation claiming to be Christian has other functions than police power. The higher civilization a state attains the less it looks to those arguments of selfishness and the more it turns its face to the need of helping the weak as against the strong. And I say that the United States Government to-day could do no nobler act, could do no more commendable thing than to pass this bill, which affects hundreds of thousands of railroad employees who can not be reached by State legislation.

The strike commission appointed by President Cleveland to investigate the railroad strike in Chicago in 1894, in its report to the President, among other things, had this to say:

When railroad employees secure * * * compensation for injury, etc., it will be time enough to consider such strict regulation for them as we can now justly apply to the railroads, whose rights are protected by laws and guarded by all the advantages of greater resources and more concentrated control. (Report on the Chicago Strike, p. 11.)

The United States Industrial Commission—and there are many members of this committee who will remember the legislation that created that Commission—was composed of five United States Senators, five members of the House, three civilians representing labor, three representing agriculture, and three representing capital. The title of the law which created that Commission stated that it should be nonpartisan. Those men composing that Commission after a study of this question—and they have gone into it more thoroughly than any committee or body has ever done in the United States—had this to say:

On the subject of railway labor, which is undoubtedly covered by the interstate powers of Congress, the Commission are of the opinion that Congress should adopt a consistent code of law regulating all matters concerning employment in the industry, such as the hours of labor, the limitation of continuous runs by engineers or continuous service by telegraph operators or switchmen without periods of sufficient rest, the enactment of a consistent employers' liability code, including a definition of the fellow-servant doctrine.

Mr. Chairman, in my walks up and down this Capitol trying to get legislation for these men who have kept me here I have been told more than once that railroad men were quasi-public servants and that they should not be permitted to strike and tie up the United States mails and interstate commerce. I have been told that by Representatives in Congress and I have been told it by others—by people who have been opposing our legislation. I want to say to all who entertain that belief, now is the time to show your consistency. If you believe in the strong hand of the United States Government, as you put it, controlling these men in labor disputes, doing it under the authority granted by the Constitution to regulate interstate commerce—if you advocate legislation which ties the man to his labor, why are you not willing to protect the man in that employment which you seek to tie him to?

The Republican national platform of 1900, in speaking of the American workmen, said:

* * * Their constantly increasing knowledge and skill have enabled them to finally enter the markets of the world.

This same platform also said:

In the further interest of American workmen we favor * * * an effective system of labor insurance.

Labor insurance and employers' liability legislation are more or less synonymous terms. This plank, we were given to understand, meant that we might expect some relief, and the men I represent really thought that we now had a start made and could expect some legislation of this kind at the hands of Congress; but there has been nothing done, and I suggest this now to remind the members of that party in Congress that that pledge is yet unredeemed. As to President Roosevelt, I am glad to on this occasion improve the opportunity of saying that we thank and commend him for what he has done in this matter. He has always been a consistent advocate of this kind of legislation. While governor of the State of New York he recommended it to the legislature of that State, and has recommended it three times to Congress. In his last annual message to the present session of Congress he had this to say:

In my annual message to the Fifty-seventh Congress, at its second session, I recommended the passage of an employers' liability law for the District of Columbia and in our navy-yards. I renewed that recommendation in my message to the Fifty-eighth Congress, at its second session, and further suggested the appointment of a commission to make a comprehensive study of employers' liability, with a veiw to the enactment of a wise and constitutional law covering the subject, applicable to all industries within the scope of the Federal power. I hope that such a law will be prepared and enacted as speedily as possible.

Mr. Chairman, I have said all I care to, and unless the members of the committee want to ask me some questions, I will be glad to quit.

I have here some data, prepared by an attorney, which shows the results of the decisions of the courts on the questions of assumption of risk and contributory negligence.

The CHAIRMAN. It is a pretty large document?

Mr. FULLER. Yes, sir; and I will be glad to submit it to the committee for its use.

The CHAIRMAN. It would be pretty difficult for us to print it. We are limited, and that would run far beyond our powers. You will appreciate that we have tried to have that printed by the House, and the House has absolutely refused to have it printed. It would exceed the limits of our appropriation to print it, and we could not undertake to print that.

Mr. FULLER. I do not understand that this matter was ever submitted before. I thank the committee for its attention.

Application for situation with American Express Company—Rules governing employment by this company.

ACCIDENT RELEASE.

Whereas I, the undersigned, have entered, or am about to enter, the employment of the American Express Company, and in the course of such employment may be required to render services in the care, carriage, or handling of merchandise and property in course of transportation by cars, vessels, and vehicles belonging to the different railroad, stage, and steamboat lines upon which the company relies for its means of forwarding property delivered to it to be forwarded;

And whereas such express company, under its contracts with many of the corporations and persons owning or operating such railroad, stage, and steamboat lines, is or may be obligated to indemnify and save harmless such corporations and persons from and against all claims for injuries sustained by its *employees:*

Now, therefore, in consideration of the premises and of my said employment, I do hereby assume all risk of accidents and injuries which I shall meet with or sustain in the course of my employment, whether occasioned or resulting by or from the gross or other negligence of any corporation or person engaged in any manner in operating any railroad or vessel or vehicle, or of any employee of any such corporation or person, or otherwise, and whether resulting in my death or otherwise.

And I do hereby agree to indemnify and save harmless the American Express Company of and from any and all claims which may be made against it at any time by any corporation or person under any agreement which it has made or may hereafter make, arising out of any claim or recovery upon my part, or the part of my representatives, for damages sustained by reason of my injury or death, whether such injury or death result from the gross negligence of any person or corporation, or of any employee of any person or corporation, or otherwise.

And I hereby bind myself, my heirs, executors, and administrators with the payment to such express company, upon demand, of any sum which it may be compelled to pay in consequence of any such claim, or in defending the same, including all counsel fees and expenses of litigation connected therewith.

I do further agree that in case I shall at any time suffer any such injury, I will at once, without demand, and at my own expense, execute and deliver to the corporation or persons owning or operating the railroad, stage, or steamboat line upon which I shall be so injured a good and sufficient release, under my hand and seal, of all claims, demands, and causes of action raising out of such injury, or connected with or resulting therefrom.

I do hereby ratify all agreements heretofore made by said express company with any corporation or persons operating any railroad, stage, and steamboat line in which such express company has agreed in substance that its employees shall have no cause of action for injuries sustained in the course of their employment upon the line of such contracting party, and I agree to be bound by each and every of such agreements in so far as the provisions thereof relative to injuries sustained by employees of the company are concerned, as fully as if I were a party thereto.

And I do hereby authorize and empower said express company, at any time while I shall remain in its service, to contract for me and in my behalf, in its own name or in mine, with any corporations or persons operating any railroad, stage, or steamboat line, for my transportation as a messenger or employee free of charge, upon the condition and consideration that neither I nor my personal representatives, nor any person claiming under me, will make any claim for compensation because of any injury sustained by me, whether resulting from the gross negligence of such corporations or persons, or of any employee of such corporations or persons, or otherwise, and the contracts so made shall be as binding and obligatory upon me as if signed and delivered by me.

And I do hereby further agree that the provisions of this agreement shall be held to inure to the benefit of any and every corporation and of all persons upon whose railroad, stage, or steamboat lines the American Express Company shall forward merchandise, as fully and completely as if made directly with such corporations or persons.

I do further agree, in consideration of my employment by said American Express Company, that I will assume all risks of accident or injury which I shall meet with or sustain in the course of such employment, whether occasioned by the negligence of said company, or any of its members, officers, agents, or employees, or otherwise; and that in case I shall at any time suffer any such injury I will at once execute and deliver to said company a good and sufficient release, under my hand and seal, of all claims, demands, and causes of action arising out of such injury or connected therewith, or resulting therefrom; and I hereby bind myself, my heirs, executors, and administrators with the payment to said express company, on demand, of any sum which it may be compelled to pay in consequence of any such claim, or in defending the same, including all counsel fees and expenses of litigation connected therewith.

Witness my hand and seal this —— day of ———, one thousand ———.

[Sign name in full] ——— ———.

——— ———.

NOTE.—If applicant is under age, his guardian must also sign this release.

———— ————, *Parent or Guardian.*

In presence of—

The following are extracts from an employment contract prescribed by one of the largest railroads in the country:

[Form 1692 special.]

Santa Fe.

G. C. & S. F. Ry. Co.
B. W. & T. Co.

G. B. & K. C. Ry. Co.
G. B. & G. N. Ry. Co.

APPLICATION FOR SITUATION.

On and contract of employment with [insert name of railway or railroad].

Instructions.—All applications for employment as train despatcher, clerk, telegraph operator, station agent, cashier, student, station baggageman, watchman or special police, conductor, brakeman, train baggageman, train porter, locomotive engineman, locomotive fireman, switchman, steam shovel engineer and fireman, pile driving engineer and fireman, steam shovel cranesman, hostler, car inspector, B. and B. and track foreman, r. h. foreman, carpenter, lineman, call boy, office boy, messenger, yardmaster, draughtsman, towerman, timekeeper, storekeeper, pumper, pump repairer, fuel foreman, assistant civil engineer, transitman, levelman, accountant, stenographer, special agent, stationary engineer, collector at station, machine shop employé (except common laborer), car shop employé, car repairer, paint shop employé (except common laborer), boiler shop employé (except common laborer), brass foundry employé (except common laborer), tin and copper shop employé (except common laborer), and such other employés as may be designated by the superintendent or mechanical superintendent, must be made by the applicant himself, in triplicate on this blank, and sworn to before a notary public, one copy to be retained by applicant.

* * * * * * *

30. Do you understand that this company does not block frogs, guard rails, or switches, and do you agree to assume the risks thereform? ——— ———.

* * * * * * *

32. Do you understand that every employé of this company whose duties are in any way prescribed by the rules must always have a copy of the rules at hand when on duty, and must be conversant with every rule, and that you must render all the assistance in your power in carrying them out, and immediately report any infringement of them to the head of your department, and do you agree that such rules, including any changes therein or additions thereto from time to time, shall be a part of this, your contract of employment? ——— ———.

* * * * * * *

34. Do you know that on or along this railway there are platforms, sheds, roofs, water and oil tank frames, water and oil spouts, coal chutes and bins, oil racks, mail cranes, switch stands, buildings, bridges, track scales, cars and engines on main or side tracks, and other overhead and side obstructions, near the track and near side and spur tracks, which are dangerous, particularly while you may be on the side or top of cars, engines, or tenders, or on the ground near same, and do you agree to inform yourself as to the particular location thereof on the section or sections, division or divisions of the road, yards, and stations, where you may work, and to use due care to avoid injury thereby, and to assume all risk of injury therefrom, and acknowledge that you have actual notice thereof? ——— ———.

35. Do you know that it is dangerous to stand erect upon cars, and especially cars above average height, while passing over, through, or under bridges or viaducts at which there are no telltales or other warnings, as follows:

MAIN LINE.

Bridge No.	Between mile posts—	Name.
55	48 and 49	Brazos River.
Viaduct.	128 and 129	
Viaduct.	130 and 131	
305	185 and 186	Little River.
C 124	297 and 298	Brazos River.
	345 and 346	Viaduct, Fort Worth.
C 217	348 and 349	Trinity River.
C 237	365 and 366	Lizabeth Creek.
C 246	371 and 372	Oliver Creek.
C 259	380 and 381	South Hickory Creek.
C 261	382 and 383	North Hickory Creek.
C 268	389 and 390	Clear Creek.
C 278	398 and 399	Spring Creek.
C 290	*408 and 409*	Elm Creek.

MAIN LINE—Continued.

Bridge No.	Between mile posts—	Name.
Viaduct.	290 and 291	
C 302	418 and 419	Red River.
C 344	440 and 441	Big Hickory.
C 385	456 and 457	Caddo Creek.
C 411	468 and 469	Rock Creek.
C 427	478 and 479	Chigley Sandy Creek.
C 436	485 plus 2	Kickapoo Creek.
C 441	490 plus 24	2d Washita.
C 450	497 plus 3	3d Washita.

DALLAS BRANCH.

	330 and 331	Viaduct, Alvarado.
6111	368 and 369	Trinity River.
Viaduct.	372 and 373	
6119	374 and 375	White Rock Creek.
6129	382 and 383	Duck Creek.
6134	387 and 388	Rowlet Creek.
6145	396 and 397	East Fork Trinity River.
	409 and 410	Viaduct, Farmersville.
6227	451 and 452	North Sulphur Creek.

HONEY GROVE BRANCH.

	440 and 441	Viaduct, Ladonia.
7005	441 and 442	North Sulphur Creek.

HOUSTON BRANCH.

A 19	53 and 54	Buffalo Bayou.

BEAUMONT DIVISION.

B 34	153 and 157	Brazos River.
B 57	167 and 168	Navasota River.
	251 and 252	Trinity River.
	287 and 288	Village Creek.

LAMPASAS BRANCH.

3013	224 and 225	Leon River.
	225 and 226	Viaduct, Belton.
3091	264 and 265	Lampasas River.
3109	272 and 273	First Sulphur Creek.
3110	272 and 273	Second Sulphur Creek.
3217	332 and 333	Blanket Creek.
3248	345 and 346	Pecan Bayou.
3358	409 and 410	Elm Creek.
3360	411 and 412	Colorado River.

And do you agree to assume the risk therefrom, and from such other bridges, viaducts, or other overhead obstructions which may be noted from time to time on the time card, and do you acknowledge actual notice of all of the same, and that in some of said overhead bridges some of the overhead braces are lower than others? ——— ———.

36. Do you realize that railroading is a dangerous business, and requires a corresponding degree of diligence to avoid injury to person and property, and that you owe a moral as well as legal duty to your employer, your fellow-employees, and to the public to use every reasonable effort, including your eyes, your ears, and your thoughts, to avoid injury to person and property? ——— ———. Do you agree that you will do so? ——— ———. Do you agree that you will observe, as far as practicable, all conditions or things that are liable to cause injury, and report the same in writing to your superior officers? ——— ———.

Do you agree that you will not assume that anything is safe, and agree that, as far as you reasonably can, you will, for your own safety, before you make

use of or expose yourself on or with the same, examine the condition of all machinery, tools, tracks, switches, cars, engines, and all the appliances thereto, or whatever you may undertake to work upon or with, and to inspect your surroundings and everything to be used by you or connected with or incident to your work, and use your best efforts to avoid injury therefrom to yourself and others? ——— ———.

Do you understand that it is expressly agreed by the company that it is your right and duty, under all circumstances, to take sufficient time before exposing yourself to make such examinations as you have here agreed to, and to refuse to obey any order which would expose you to danger? ——— ———.

37. Do you understand that if you are injured in any manner while in the service of this company, that you will not be allowed to return to the service of the said company, in any capacity, until you have executed a release or made satisfactory settlement with the proper officer? ——— ———. * * *

39. Do you understand that this company does not have all its main tracks, side, and spur tracks ballasted or surfaced, and that the tracks are liable to have slivers on the rail, and that there are open and surface cattle guards and open culverts in the main tracks and in side and spur tracks, of all of which you accept notice and agree to particularly advise yourself thereof and to assume the risk therefrom? ——— ———.

40. Do you understand and agree that no officer or employee of this company is authorized to request or require you to use defective tracks, cars, machinery, or appliances of any kind, except at your own risk of injury therefrom? ——— ———.

41. Do you understand that this company desires to employ only experienced men in its service, and do you state that you are aware of the hazards and dangers of the business, and agree to rely upon your coemployees, and not upon the company, for information as to any or all things, including the character of any kinds of machinery and appliances which would render your work dangerous or subject you to injury, or which may be necessary to the proper performance of your duty; and do you waive any responsibility whatever on the part of the company or its officers touching the matters herein referred to, and that this shall apply to any position to which you may now or hereafter be assigned? ——— ———.

42. Do you agree that whenever you shall sustain any personal injury while in the service of this company you will allow its surgeons and any medical examiners it may select to examine your person and body as often as this company may desire in respect to the alleged injury, and hereby waive all objections to such surgeons or medical examiners testifying whenever called upon by this company; and do you further agree that your refusal to allow any such examination or testimony shall be a bar to the institution or prosecution of any action on account of such injury or injuries, and that any action pending at the time of such refusal shall at once abate in consequence thereof? ——— ———.

43. Do you agree that if while in the service of this company you sustain any personal injury you will give notice in writing within ninety-one days thereafter of such claim to the general claim agent, or to the nearest or any other convenient local agent of the company, which notice shall state the time, place, and particulars of the injuries, and the nature and extent thereof and the claim made therefor, to the end that such claim may be fully, fairly, and promptly investigated, and that your failure to give written notice of such claim, in the manner and within the time aforesaid, shall be a bar to the institution of any suit on account of such injuries? ——— ———.

44. Should you enter the service of this company pending the approval of your application, and said application be not approved, do you agree to be removed from the service at once, but that at all times while in the service this shall constitute a contract of employment; and do you agree that your employment for any time, however short, or if you are already employed, that your continuance in this company's employment for any time, however short, shall be a legal and adequate consideration for the execution of this contract, and that if your failure to perform or comply with any of the terms of this, your contract of employment, shall cause or contribute to your injury you will have no cause of action against this company, and hereby expressly waive the same? ——— ———.

——— ———, *Applicant.*

My present address is ——— ———.

Witness:

——— ———.

——— ———.

Dated at ——— ———, 190—.

STATE OF ——— ———,
County of ——— ———, *ss:*

——— ———, being first duly sworn, says on oath that he is the applicant named in the foregoing application; that said application is signed by him; that the answers to questions in said application are made in his own handwriting; that each and all of the answers contained in said application are true, and that he has carefully read said application and knows its contents, and that same will be his contract of employment, and that he has executed and will retain in his possession a duplicate thereof.

——— ———,
Applicant.

——— day of ——— ———, 190—.
[SEAL.]

——— ———,
Notary Public.

TESTIMONY OF H. R. FULLER BEFORE THE UNITED STATES INDUSTRIAL COMMISSION ON MAY 11, 1900.

Relief departments by railroads.—Some roads conduct relief departments, which are kept up principally by deductions from the wages of the employees each month. These associations are in name "voluntary," but in nature they are compulsory; that is, the old employees who do not belong to them are coerced or intimidated into joining them; and new applicants for employment are not hired unless they agree to become members of these associations. The employees have some voice in their management and are allowed a minority representation on the advisory boards, but the railroad companies in organizing these associations and making the laws to govern them have shrewdly seen to it that the companies' representation on the boards is in the majority, and can at all times dictate and dominate the policy of the association. They have taken good care, too, to see to it that the law-making power of the associations can never fall into the hands of the employees. As I have said, these associations are kept up mostly by monthly deductions from the wages of the employees, but the companies agree to make good any deficiency in the fund. As a condition of receiving benefits, an employee must release the company from responsibility for injury, because it agrees to make good any deficiency in this fund. As the figures of those who have investigated show that the amount paid in by the employees is sufficient to fully cover the cost of carrying their risks, and that the amount paid into such fund by the company is only between one-fifth and one-sixth of the total amount paid in, it is considered that it is taking a very unfair advantage of the employees to require them to release the company from responsibility for injury.

(For insurance rates, see Locomotive Engineers' Journal for September, 1896, pp. 784–789; for figures in regard to the amount contributed by railroad companies to relief funds, see evidence of J. K. Cowen in hearings before the Industrial Commission on transportation, p. 306.)

The effect of these associations on the relations between employer and employee is anything but pleasant. The employees have had their eyes opened in regard to these associations. They see that through the intricate workings of these relief departments they are being financially robbed and deprived of their legal rights in the courts, and they denounce them bitterly.

The primary motives of railroad companies in operating these departments are avaricious rather than benevolent. First, because they require an employee to release them from responsibility for injury, and, second, because membership in the relief department keeps employees out of labor organizations on account of their being unable to pay the dues in both. In this way the employees are deprived of the great benefit of labor organizations and the company's hands are therefore more free to impose unfavorable conditions upon its men, and through this means they will become gradually bound up so that the company can do as it pleases with them. If these relief departments did not serve the purposes of releasing the company from responsibility for injury and alienating the interest of employees from labor organizations, there would not be many of them in existence.

I have not had the time and means at my command to make as thorough an investigation of these departments as I would like to have done, but I have been able to gather enough evidence together to substantiate the charge that they are

founded on iniquity and governed by laws that are in direct conflict with the spirit of American institutions, and are foisted upon the employees in defiance of the laws of our country. So numerous are the flagrant abuses practiced by railroad companies through these relief departments upon their employees that I will not attempt to cover them all, but will try to point out to you those that have appeared to me to be the most unjust and open to criticism.

I wish first to call your attention to the blank applications for membership prescribed by three railroads which operate these associations:

BALTIMORE AND OHIO RAILROAD COMPANY—RELIEF DEPARTMENT.

Application for full membership in the relief feature.

To the Superintendent of the Relief Department:

I, ——— ———, of ———, in the county of ——— and State of ———, desiring to be employed in the service of the Baltimore and Ohio Railroad Company as ——— in the ——— department, ——— division, do hereby, as one of the conditions of such employment, apply for membership in the relief feature, and consent and agree to be bound by all the regulations of the relief department now in force and by any other regulations of said department hereafter adopted applicable to the relief feature; for which regulations now in force reference is hereby had to any copy of the last edition of the book of regulations of said department issued by the superintendent.

I also agree that the said company, by its proper agents, and in the manner provided in said regulations, shall apply monthly in advance from the first wages earned by me under said employment in each calendar month, sums at the rate of ——— per month as a contribution to the relief feature of said department, for the purpose of securing the benefits provided by said regulations for a member of class —— to myself, or in the event of my death to ———, or to whomever I may hereafter, from time to time, designate in writing by way of substitution, with the written consent of the superintendent; or if no such beneficiary be then living, to my next of kin (as determined by the laws of the State of Maryland), in accordance with regulation No. 18, subject to all the provisions and requirements of said regulations.

I expressly stipulate that my marriage shall ipso facto have the effect to substitute my wife in the place and stead of the beneficiary named above to receive said benefits, in the event of my death, if she be then living.

I further agree that this application when accepted by the superintendent shall constitute a contract between myself and the said company as a condition of my employment by the company, governed in its construction and effect by the laws of the State of Maryland, and as such be an irrevocable power and authority to said company to appropriate the above amounts from my wages and apply the same as aforesaid, and shall constitute an appropriation and assignment in advance to the said company in trust for the purpose of the relief feature, of ——— such portion of my wages, which assignment shall have precedence over any other assignment by me of my wages or of any claim upon them on account of liabilities incurred by me.

I further agree that in consideration of the contributions of said company to the relief department and of the guaranty by it of the payment of the benefits aforesaid, the acceptance of benefits from such relief feature for the injury or death shall operate as a release of all claims against said company or any company owning or operating its branches or divisions or any company over whose railroad, right of way, or property the said Baltimore and Ohio Railroad Company or any company owning or operating its branches or divisions shall have the right to run or operate its engines or cars or send its employees in the performance of their duty, for damages by reason of such injury or death which could be made by or through me; and that the superintendent may require as a condition precedent to the payment of such benefits, that all acts by him deemed appropriate or necessary to effect the full release and discharge of the said companies from all such claims be done by those who might bring suit for damages by reason of such injury or death; and also that the bringing of such a suit by me, my beneficiary or legal representative, or for the use of my beneficiary alone or with others, or the payment by any of the companies aforesaid of damages for such injury or death recovered in any suit or determined by a compromise or any costs incurred therein, shall operate as a release in full to the relief department of all claims by reason of membership therein.

I also agree for myself and those claiming through me to be specially bound by regulation No. 11, providing for the final and conclusive settlement of all disputes by reference to the superintendent of the relief department and an appeal from his decision to the committee on the relief department.

I understand and agree that this application when accepted by the superintendent shall constitute a contract between me and the said company, by which my rights as a member of the relief feature and as an employee of said company shall be determined as to all matters within its scope; that each of the statements herein contained and each of my answers to the questions asked by the medical examiner and hereto annexed shall constitute a warranty by me, the truth whereof shall be a condition of payment of the benefits aforesaid.

I hereby certify that I am —— years of age; am correct and temperate in my habits, and have no injury or disease, constitutional or other, which will tend to shorten my life; am now in good health, and able to earn a livelihood.

In witness whereof I have signed these presents at ———, in the State of ———, this day of ———, 18—.

Witness: ——— ———.

The foregoing application is accepted at the office of the superintendent of the relief department, in Baltimore City, Md., this —— day of ———, 18—.

——— ———.

Superintendent of the Relief Department.

PENNSYLVANIA RAILROAD COMPANY—RELIEF DEPARTMENT.

Application for membership in the relief fund.

To the Superintendent of the Relief Department:

I, ——— ———, of ———, in the county of ——— and State of ———, employed in the service of the Pennsylvania Railroad Company, as ——— upon the ——— department, ——— do hereby, by reason of such employment, apply for membership in the relief fund, and consent and agree to be bound by the regulations of the relief department of the said company as contained in the book of said regulations, approved by the board of directors, which I have read or have had read to me, and by any other regulations of the said department hereafter adopted, and by the provisions of any agreement or agreements made by the said company with any other corporation or corporations associating in adminstration of their respective relief departments, in accordance with said book of regulations.

I also agree that the said company, by its proper agents, and in the manner provided in said regulations, shall apply as a voluntary contribution from any wages earned by me under said employment, or from benefits that may hereafter become payable to me, at the rate of —— per month, for the purpose of securing the benefits provided for in the regulations for a member of the relief fund of the —— class, and additional death benefit, equal to ——— the death benefit of the first class. Unless I shall otherwise designate in writing, with the approval of the superintendent of the relief department, death benefit shall be payable to ——— ——— (here designate the beneficiary or beneficiaries).

And if any person now or hereafter designated by me to receive the death benefit shall not be living or shall be incapacitated for executing the requisite receipt and release, or if there shall be no such person, the death benefit shall be payable as provided in the regulations of the relief department for such event. And I agree that the acceptance of benefits from the said relief fund for injury or death shall operate as a release of all claims for damages against said company arising from such injury or death which could be made by or through me, and that I or my legal representatives will execute such further instrument as may be necessary formally to evidence such acquittance.

I also agree that this application, when approved by the superintendent of the relief department, shall make me a member of the relief fund on and from the date upon which, by the provisions of the regulations and the terms of this application, it takes effect, and shall constitute a contract between myself and the said company, and that the terms of this application and the regulations of said department shall, during my membership, be a part of the conditions of my employment by the company, and that the same shall not be avoided by any change in the character of my service, or locality where rendered while in such employment, nor by any change in the amounts applicable from my wages to the relief fund which I may hereafter consent to, and that the agreement that the above-named amounts shall be appropriated from my wages shall apply also to any other amounts arising from changes made as aforesaid, and shall constitute an appropriation and assignment in advance to the said company, in trust, for

the purposes of the relief fund, of such portions of my wages, which assignment shall have precedence over any other assignment by me of my wages, or of any claim upon them on account of liabilities incurred by me.

I also agree, for myself and those claiming through me, to be especially bound by regulation numbered 65, providing for final and conclusive settlement of all disputes by reference to the superintendent of the relief department and an appeal from his decision to the advisory committee.

I certify that I am correct and temperate in my habits; that so far as I am aware I have no injury or disease, constitutional or otherwise, which will tend to shorten my life, and am now in good health and able to earn a livelihood.

I also agree that any untrue or fraudulent statement made by me to the medical examiner, or any concealment of facts in this application, or resignation from the service of the said company, or my being relieved from employment and pay therein at the pleasure of the company or its proper officers, shall forfeit my membership in the aforesaid relief fund and all benefits, rights, or equities arising therefrom, excepting that my leaving the service shall not (in the absence of any of the other foregoing causes of forfeiture) deprive me of any benefits to the payment of which I shall have previously become entitled by reason of accident or sickness occurring while in the serivce.

This application to take effect the —— day of ———, A. D. ——, if I shall be on duty on that date; otherwise upon the date of my going on duty thereafter.

In witness whereof I have signed these presents at ———, in the county of ———, State of ———, this —— day of ———, A. D. ——.

Witness: (Signature) ——— ———.

The foregoing application is approved at the office of the superintendent of the relief department, at ———, in the county of ———, State of ———, this —— day of ———, A. D. ——.

(Signature) ——— ———,
Superintendent of the Relief Department.

Application for membership in the Philadelphia and Reading Relief Association.

To the Superintendent of the Philadelphia and Reading Relief Association:

I, ——— ———, of ———, in the county of ———, and State of ———, employed, or about to be employed, in the service of the ——— Company as ——— the ——— do hereby, by reason of such employment, apply for membership in the Philadelphia and Reading Relief Association, and consent and agree to be bound by the regulations of said association, as contained in the book of said regulations, approved by the advisory committee, which I have read or have had read to me, and by any other regulations of the said association which may be hereafter adopted.

I also agree that the said company, my employer, or any other company whose employees may become members of the said association, and which may hereafter employ me, shall, by its or their proper agents, and in the manner provided in said regulations, apply as a voluntary contribution from any wages earned by me under such employment, or from benefits that may hereafter become payable to me, at the rate of ——— ($———) per month, for the purpose of securing the benefits provided for in the regulations for a member of the said association of the —— class, and additional death benefit equal to ——— the death benefit of the first class. Unless I shall otherwise designate in writing, with the approval of the superintendent of the relief association, death benefit shall be payable to ——— ———. [Here designate the beneficiary or beneficiaries.]

And if any person now or hereafter designated by me to receive the death benefit shall not be living at the time of my death, or shall be incapacitated for executing the requisite receipt and release, or if there shall be no such person, the death benefit shall be payable as provided in the regulations of the association for such event. Any funeral or other expenses incident to my death which shall have been paid by the superintendent of the relief association in accordance with the regulations, shall be held to be in part payment of the said death benefit, and the amount so paid shall be deducted from the total amount of said death benefit before payment to the person or persons entitled to receive the same. And, in consideration of the contribution to be made to the relief fund of the said association by the Philadelphia and Reading Railroad Company, and its successors, and of the agreement of the several associated companies in respect of any deficit in the relief fund for benefits to their respective employees, I hereby agree that the acceptance of benefits from the said relief fund, or from said association, for injury or death, shall operate as a release of *all claims* for damages against said company, my employer, and against any *of said associated companies* by which I may hereafter be employed, arising from

such injury or death, which could be made by or through me, and that I or my legal representative will execute or, where necessary, procure to be executed, such further instrument as may be necessary formally to evidence such acquittance.

I also agree that this application, when approved by the superintendent of said association, shall make me a member of said association on and from the date upon which, by the provisions of the regulations of said association and the terms of this application, it takes effect, and shall constitute a contract between myself and said company, my employer, and such of the associated companies by which I may be hereafter employed, and that the terms of this application and the regulations of said association shall, during my membership, be a part of the conditions of my employment by said companies, or any of them, and that the same shall not be avoided by any change in the character of my service, or locality where rendered, while in such employment, nor by any change in the amounts applicable from my wages to the relief fund which I may hereafter consent to, and that the agreement that the above-named amounts shall be appropriated from my wages shall apply also to any other amounts arising from changes made as aforesaid, and shall constitute an appropriation and assignment in advance, to the said company or companies, my employers, in trust, for the purposes of said association, of such portion of my wages, which assignment shall have precedence over any other assignment by me of my wages or of any claim upon them on account of liabilities incurred by me.

I also agree for myself and those claiming through me to be especially bound by the regulations providing for final and conclusive settlement of all disputes by reference to the superintendent of said association and an appeal from his decision to the advisory committee.

I certify that I am correct and temperate in my habits; that, so far as I am aware, I have no injury or disease, constitutional or otherwise, which will tend to shorten my life, and am now in good health and able to earn a livelihood.

I do hereby further acknowledge, consent, and agree that any untrue or fraudulent statements made by me to the medical examiner, or any concealment of facts in this application, or my resignation from the service of said company, my employer, or from any of the associated companies, or my being relieved from employment and pay therein at the pleasure of the said companies, or any of them, or their proper officers, shall, except as otherwise provided in the regulations, forfeit my membership in the said association, and all benefits, rights, and equities arising therefrom, excepting that my leaving the service shall not (in the absence of any of the other foregoing causes of forfeiture) deprive me of any benefits to the payment of which I shall have previously become entitled by reason of accident or sickness occurring while in the service.

This application shall take effect on the —— day of ———, A. D. ——, if on that date I shall be on duty in the service of the said company; otherwise upon the date of my going on duty in such service, and am not at the time suffering from injury or disease.

In witness whereof I have signed these presents at ———, in the county of ———, State of ———, this ——day of ———, A. D. ——.

——— ———,
Signature of applicant.

Witness: ——— ———.

——— ———,
Signature of parent, guardian, or husband.

Witness: ——— ———,
Witness to signature of parent, etc.

The foregoing application is approved at the office of the superintendent of the Philadelphia and Reading Relief Association at Philadelphia, Pa., this —— day of ———, A. D. ——.

——— ———,
Superintendent of the Philadelphia and Reading Relief Association.

It is claimed by some of the defenders of these departments that membership in them is "strictly voluntary." This argument is denied by the employees and others who have investigated the subject, and so convincing are the facts to the contrary that the argument is not taken seriously by those who have become acquainted with the inside workings; but fearing the same old argument might be presented to this Commission I will point out a few of the facts which to my mind clearly prove the fallacy of the contention. In a table which I will submit later I will show that a large majority of the employees who have spoken on the matter say that it is necessary to join the relief

departments to secure employment, or that they are intimidated or coerced into joining them after securing employment. Prof. E. R. Johnson, of the University of Pennsylvania, who made an investigation of these departments, in his evidence before this Commission said:

* * * "A prominent official of an important railway corporation told me in a confidential conversation that he did not care whether the membership in relief association was compulsory or not. At that time his railway made membership in his association compulsory; but he stated that he did not care whether it was compulsory to join the association or not, for the reason that the indirect pressure that the corporation could bring to bear would accomplish the same result."

After making this statement he was asked this question: "Did they force the employees?" To this question he answered: "Yes." (Hearings before the Industrial Commission on the subject of Transportation, p. 57.)

In the application for membership in the Baltimore and Ohio Relief Department, heretofore quoted, the following appears:

"I, ——— ———, of ———, in the county of ——— and State of ———, desiring to be employed in the service of the Baltimore and Ohio Railroad Company as ——— in the ——— department, ——— division, do hereby, as one of the conditions of such employment, apply for membership in the relief feature, and consent and agree to be bound by all the regulations of the relief department now in force and by any other regulations of said department hereafter adopted applicable to the relief feature."

When an employee is required to join the relief department as a condition of employment, is not membership in that department compulsory?

President C. P. Huntington, of the Southern Pacific Railway, in a circular issued February 15, 1900, establishing the relief department on that road, said: "Applicants for employment after March 1, 1900, must become members of the relief department before entering the company's service." (Railroad Trainmen's Journal for April, 1900, p. 335.)

I think this is sufficient evidence to prove to a reasonable mind that membership in these associations is not voluntary, and I would not encroach upon the Commission's time by submitting any further proof were it not for the fact that in the face of all the evidence that has been produced, I expect you will find some people who will still insist that membership is voluntary, so I wish to call your attention to the evidence of Hon. J. K. Cowen, president of the Baltimore and Ohio Railroad, before this Commission October 21, 1899:

In answer to a question by Senator Mallory, he said: "If a person comes into the service now he agrees to go into the relief department."

In answer to a question by Commissioner Farquhar, he said: "He can not get into the service without going into the relief department unless he is over age and for some special reason is relieved." (Hearings before the Industrial Commission on Transportation, p. 305.)

The next claim made for these departments is that the money received from the employees to keep up the fund is given in "voluntary contributions." If membership in these associations is compulsory it necessarily makes the payment of these moneys compulsory, and to prove the former is but to prove the latter. Therefore I think it almost a waste of time to say any more on that proposition, but it might be well to here call your attention to the straits these companies must have been in when making the laws to govern these departments to find words deceptive enough to answer their purposes but still look good on the outside.

That they were in a measure unsuccesful in this is shown by their making a new definition for the word "contributions." On page 21 of the regulations governing the Baltimore and Ohio Relief Department I find the following: "The word 'contribution,' wherever used in these regulations, refers to the sums paid into the treasury of the company on account of the relief feature, either by appropriation of wages earned or by deposits of cash for or by members."

On page 29 of the regulations governing the Pennsylvania Voluntary Relief Department I find it defined in this way: "The word 'contribution,' wherever used herein, shall be held to mean such portion of wages or benefits, or cash payments in lieu thereof, as a member shall have agreed in his application shall be applied for the purpose of securing to him the right to benefits from the relief fund."

On page 30 of the regulations governing the Philadelphia and Reading Relief Association I find it defined in these words: "The word 'contribution,' wherever used herein, shall be held to mean such portion of wages or benefits, or cash payments in lieu thereof, as a member shall have agreed in his application

shall be applied for the purpose of securing to him the right to benefits from the relief fund."

They first compel a man to join these associations and agree to allow them to keep a part of his wages each month, and then want to call it a contribution. If there was not an attempt at deception in this matter, why did they pick a word that required so much defining? I believe that the general understanding of the word contribution is to give of one's own free will, and I deny that these employees pay this money in that spirit. And while they may not have the means of education at their command that the railway managers have, they are well enough acquainted with the English language to know that white is not black and a thousand definitions will not make green mean yellow.

Now as to the objects or motives of railway managers in operating these departments. The companies claim that the object is benevolence. We dispute this, and claim, on the other hand, that their motives are avaricious.

What the companies would have us believe are their motives are printed in their regulations, and it might be well to quote them. On page 9 of the regulations governing the Pennsylvania Railroad Voluntary Relief Department, I find this declaration:

"The object of this department is the establishment and management of a fund to be known as 'The relief fund,' for the payment of definite amounts to employees contributing to the fund, who under the regulations shall be entitled thereto, when they are disabled by accident or sickness, and in the event of their death, to the relatives or beneficiaries specified in the applications of such employees."

On page 3 of the regulations governing the Philadelphia and Reading Relief Association, the purpose is stated in this language:

"The object of this association is the establishment and management of a fund to be known as 'The relief fund,' for the payment of definite amounts to members of the association, when, under the regulations thereof, they shall be entitled thereto by reason of disablement from accident, sickness, or other cause, and, in the event of their death, to their relatives or other beneficiaries specified in their applications for membership or thereafter designated in accordance with the said regulations."

On page 4 of the regulations governing the Baltimore and Ohio Relief Department, it is put briefly in this language:

"The relief feature will afford relief to its members entitled thereto when they are disabled by injury or sickness, and to their families in the event of their death."

But we are fully convinced that these luring promises are only for the purpose of throwing dust in the eyes of the employees, and that the primary objects of the railroad companies in operating these departments are to deprive the employees of the right to sue in case of injury, and to keep them out of labor organizations.

As I have said before, I think if these two things could not be accomplished there would not be many relief associations in existence. Taking the second question first, I will give you what I think are good reasons to base this claim on:

In the first place, many of the employees say that they believe one of the objects of the companies is to keep them out of labor organizations. They also testify that it serves this purpose, for men are sometimes unable to keep up the dues in the relief department and their labor organizations, and as it is compulsory on them to pay dues into the relief department they must withhold their membership from the labor organizations.

In 1889, shortly after these relief associations had been started, Mr. E. F. O'Shea, grand secretary and treasurer of the Brotherhood of Railroad Brakemen, in answer to questions submitted by the Department of Labor in regard to relief associations, said:

"Some of the principal lines have lately organized so-called relief associations for the ostensible purpose of 'caring for our dear employees,' but the real purpose is to undermine and ultimately to destroy the brotherhood and place the men entirely at the mercy of the corporations. The brakeman does not receive wages commensurate with the work he performs or the dangers he is compelled to undergo, hence he is unable to keep up his membership in more than one organization, and as a portion of his wages is retained each month for his membership in the relief fund he has no choice in the matter. A protest will result in discharge, and a discharge forfeits all moneys paid into the fund. The relief fund is a delusion and a snare, and many of the brakemen know it from bitter experience." (Fifth Annual Report of the Commissioner of Labor, p. 39.)

Prof. E. R. Johnson, in testifying before this commission, said: "A majority of railroad men could not afford to carry insurance in the relief departments and in the brotherhoods; both the relief departments rather worked against the beneficial departments of the brotherhoods." Further he was asked: "Did it lessen their allegiance to the brotherhood organization?" To this he answered: "Yes; and made it rather difficult for a man who was to be a member of the relief department to join the brotherhoods." (Hearings before the Industrial Commission on Transportation, p. 57.)

Now, as to the other motive that prompts these companies—that of depriving employees of the right to recover for injury:

Each of these companies, as will be noted by glancing over the applications for membership in the relief department, requires as a condition of receiving benefits from the fund that the employee shall release it from all claims for damages arising from such injury.

If the companies are prompted by a spirit of benevolence, why do they take such an unfair advantage of an injured employee? Is it benevolence to strip a cripple of the legal rights given him by the laws of the land? One of the strongest evidences that the greatest desire of railroad companies is to prevent the paying of damages is afforded by watching their actions in such matters, and I desire right here to call the Commission's attention to the attitude of some of our railway managers toward their employees who have been injured in the service and have sought redress in the courts—the way they discourage these employees and apparently use every means at their command to suppress the evidence and truth in these cases. For instance, a road is running from Pennsylvania into Ohio. The laws and courts of Ohio are considered by the employees to be more fair and equitable than those of Pennsylvania, and the employee of this road when he sues naturally goes to Ohio to enter suit, and the case is tried in Ohio. He has to depend on his fellow-employees, who are his witnesses, to go voluntarily into Ohio to give evidence, because, as I understand it, they can not be compelled to go from one State into another to give evidence in such cases. The officers of the road go to these witnesses and tell them that they do not have to go into Ohio to testify unless they want to, and they give them to understand that it is the company's desire that they do not go. These employees are talked to by their superior officers, from the train master up to the general superintendent, and are finally persuaded not to go. Then the only way left open for the injured employee to get their testimony is to go into Pennsylvania and take their depositions. The practice in taking these depositions is for the counsel on both sides to get together and mutually agree on a date on which they will go together and take the depositions. The counsel for the company advises the officers of the road what day they will come, and the company then goes to these witnesses whose testimony would be favorable to the employee and gets them to go to some place where they can not be found on the day the depositions are being taken.

It is made known to these witnesses, too, that they will lose nothing for the loss of time and expenses while evading the lawyers. Then, too, if a good witness for the plaintiff is on a run that takes him into Ohio, and they fear he will be subpœnaed some time while in Ohio, they will in some instances put him on another part of the road to work, so that he will not run into Ohio. These witnesses know and feel in their own hearts that they are doing a wrong to their fellow-employee, but the remonstrances, or at least the suasive talk of a general superintendent, who has probably never honored them with an audience before, is too much for their will power, and they finally bend. And in this way the poor employee who has been injured through some fault of the company is deprived of some of his best witnesses. I remember, however, of one case where a man was handled in this way, and he was taken to task for it by his lodge of our organization; and when he fully realized the way his fellow-workmen felt about it, he took courage and went and freely gave his testimony; and the plaintiff, who was a member of a sister organization, recovered several thousand dollars for the loss of a hand.

What I desired to bring out by the foregoing was to show the means railroad officers will resort to to save damage suits; and it strengthens my assertion that one of the main features of the relief departments is to prevent the collection of damages for injury, when the company is liable.

But no stronger evidence can be obtained, showing the objects of these relief associations, than to take some of the history of the actions of the companies toward legislation which sought to nullify these release contracts. A few years ago, when such legislation was proposed in the State of Iowa, the Chicago, Burlington and Quincy Railroad Company, which operates a relief department,

marshaled all of its forces and influence and resorted to some questionable means to defeat this measure.

The fight made by the railroad employees in Iowa aroused so much public sentiment against these departments in that part of the country that the Pennsylvania Company was very much disturbed lest their association would be stripped of its best feature by State legislation in that section of the country. So at the last session of the Indiana legislature it sought to legalize its relief department by statute and had its attorneys draft the following bill, which was introduced in the senate by a senator who was favorable to that corporation:

[Engrossed senate bill No. 335.]

A BILL for an act making it lawful for railroad companies owning or operating railroads in the State of Indiana, and for all other corporations, companies, firms, or persons employing labor in said State, to organize and maintain relief departments for the creation, maintenance, and management of relief funds for the payment of benefits to employees contributing to such funds when disabled by accident or sickness, and in the event of their death to their relatives or other beneficiaries, authorizing employees to agree to contribute, and to contribute voluntarily to such funds, providing that the expense and cost of managing, caring for, investing, and disbursing such funds shall be borne solely by said corporation, companies, firms, or persons; that they shall be liable for the safe-keeping thereof, and for any deficiency in said funds, providing for the acceptance of benefits from said funds by the members and their beneficiaries, and prescribing the effect of such acceptance, and matters relating thereto, and declaring an emergency.

SECTION 1. *Be it enacted by the general assembly of the State of Indiana*, That it shall be lawful for railroad companies owning or operating railroads in said State, and for all other corporations, companies, firms, or persons employing labor in said State to organize and maintain relief departments for the creation, maintenance, and management of relief funds for the payment of benefits in definite amounts to employees contributing to such funds when they are disabled by accident or sickness, and, in the event of their death, to the relatives or other beneficiaries of the decedent who may be specified in the application for membership of such employees.

SEC. 2. The employees of such companies, corporations, firms, and persons may agree to contribute and may contribute voluntarily to the creation and maintenance of such funds, but all the expense and cost of managing, caring for, investing, and disbursing such funds shall be borne solely by the companies, corporations, firms, and persons, and they shall be liable for their safe-keeping and for any deficiency in the funds to pay the benefits agreed upon.

SEC. 3. In case of personal injury to any employee or of his death while a member of any such relief department and entitled to benefits, he or his beneficiary named in the application for membership may accept the benefits from the relief fund in lieu and in bar of any damages resulting from such injury or death, and the acceptance of benefits from the relief fund to which such employee or his beneficiary is entitled by reason of membership in the relief department shall be a valid defense to any action for damages resulting from such injury or death, but nothing contained herein or in any contract of such employees shall operate to deprive him or his representatives of his or their right of action for damages resulting from such injury or death if such employee or his beneficiary does not accept the benefits from such relief fund.

SEC. 4. An emergency exists for the immediate taking effect of this act; therefore the same shall be in force from and after its passage.

The company worked hard for the passage of this measure and kept a number of its employees at Indianapolis trying to show the legislators the blessings of their so-called "voluntary relief department." The bill was referred to the committee on judiciary, which reported the bill with amendment, as follows:

"MR. PRESIDENT: Your committee on judiciary, to which was referred senate bill No. 335, introduced by Senator Hogate, has had the same under consideration and begs leave to report the same back to the senate with the recommendation that said bill be amended by adding to section 3 the following:

"Amend by adding to section 3 the following:

"'*Provided*, That there shall be paid to any employee or beneficiary any and all benefits to which he is entitled by reason of such membership for the period of 15 days after his injury, and the acceptance of such benefit shall not operate as a bar in a suit for damages on account of such injury; and any act done, or any release or contract executed, within 15 days of any injury received by any member of any such association, shall not be a bar to any suit for damages on account of said injury; and that when so amended said bill do pass.'

"J. D. EARLY, *Chairman.*"

The amended report was concurred in February 17, 1899, and on February 24, 1899, the bill was called up by Senator Hogate, the man who introduced it, and

read a third time by sections. It was then again amended by striking out all of lines 11 and 12, after the word "death," in section 3. And then it was still further amended by striking out all of section 3.

This left a measure that was undeceptive and would have carried out every principle set forth in the Pennsylvania Company's declaration of purposes of its relief fund. But this kind of legislation was not what it was seeking; it was seeking to legalize these release contracts; and when these iniquitous provisions were stricken from the bill the senator who had introduced it, and, as I understand it, introduced it at the instance of the Pennsylvania Company, moved to strike out the enacting clause, which motion prevailed, and it killed the bill.

Mr. Chairman, I have taken particular pains to look up the history of this Indiana legislation in order to give you the exact facts. I placed myself in communication with the secretary of state of Indiana; also with the chairman of the legislative board of railroad employees of that State, who was in attendance at Indianapolis during that session of the legislature, and to substantiate my statements I submit their letters:

DEPARTMENT OF STATE,
INDIANAPOLIS, IND., *January 22, 1900.*

H. R. FULLER, *Washington, D. C.*

DEAR SIR: I herewith inclose to you a type-written copy of senate bill No. 335, introduced in the senate of the sixty-first general assembly. The original bill, with the amendments added thereto, had been ordered to engrossment, after which, on February 24, the enacting clause was stricken out, and therefore the bill was killed.

Very truly, yours, GEO. W. GONSER, *Deputy Secretary.*

I again wrote to the secretary of state for more details in regard to this bill and received the following letter:

INDIANAPOLIS, IND., *March 12, 1900.*

H. R. FULLER, *Washington, D. C.*

DEAR SIR: Replying to your favor of March 10, I beg to say that senate bill No. 335 was introduced into the general assembly by Hon. Enoch G. Hogate, a Republican senator. On February 24, 1899, the bill was called up by Mr. Hogate and read a third time by sections. Senator Minor, a Democrat, made the following motion:

"I move you that senate bill No. 335 be referred to a committee of one and amended by striking out all of lines 11 and 12 after the word 'death' in section 3," which motion prevailed.

Senator Morris Winfield, a Democrat from the district composed of Cass and Pulaski counties, made the following motion:

"I move you that senate bill No. 335 be amended by reference to a committee of one, its author, with instructions to strike out section 3," which motion prevailed, on a decision whereon 21 senators voted in the affirmative and 13 senators voted in the negative.

The bill as amended did not meet the approval of Senator Hogate, who thereupon moved to strike out the enacting clause, which motion prevailed. If there is any blame to be attached to either party for the defeat of this bill, it can only be attached to the Democratic party.

Very truly, yours,

UNION B. HUNT, *Secretary of State.*

The following is the statement made by Mr. B. L. Frederick, the chairman of the railroad employees' legislative board:

INDIANAPOLIS, IND., *May 16, 1899.*

H. R. FULLER, *McKees Rocks, Pa.*

DEAR SIR: Your letter of the 1st instant relative to the bill introduced at the last session of the general assembly of this State, making it lawful for railroad companies and other corporations to organize and maintain relief departments, received.

This bill, which was known as S. B. 336 and introduced by Senator Hogate, of Boone County, was, I understand, drawn up by Mr. Samuel O. Pickens, of this city, and the chief counsel for the Pittsburg, Cincinnati, Chicago and St. Louis Railway in this State. This company (Pittsburg, Cincinnati, Chicago and St. Louis Railway) kept 6 of their employees stationed at the state house during the entire session, working in the interest of this measure—they having a list showing the percentage of members and nonmembers on each division to show that the relief department as conducted by that company was purely voluntary *and not compulsory.* On 2 or 3 of these divisions the percentage of membership

was as low as 60 per cent, but upon investigation I find the majority of the employees on these divisions that have a low percentage are men who are past the prime of life and would be considered by other insurance companies as poor risks.

The bill met with great opposition from the representatives of the employees for this reason: That the acceptance of the benefits of the relief association was a valid defense for the company in a suit for damages.

When the bill came up for passage with the amendment attached all interest was lost, showing conclusively that the bill was introduced to have the relief departments act as a bar in a suit for damages.

Trusting you will find this information sufficient, I am, sir,

Very respectfully, yours, B. L. FREDERICK.

Chairman Indiana Legislative Board.

Subscribed and sworn to before me this 29th day of March, A. D. 1900.

[SEAL.] JOHN W. DONNELLY,

Notary Public in and for Cook County, Illinois.

Now, I wish to call your attention to the remarkable wording of the title of this bill. Note how lucidly it sets forth every provision of the bill except the release provision. That is covered by these harmless-appearing words: "and prescribing the effect of such acceptance, and matters relating thereto." Indeed, the language of the bill is almost a repetition of that in the title, with this one exception. If there was not an attempt to deceive, why did they not clearly express this provision in the title of the bill? If this release clause was fair, why were they afraid to set it forth in the title as they did the other provisions of the bill? Why did they not say in the title: "and the acceptance of benefits from the relief fund shall be a valid defense to any action for damages resulting from such injury or death?"

But this is not all the evidence that can be produced to show that the greatest object aimed at is to save damage suits. The employees are almost unanimous in that opinion. Prof. E. R. Johnson, whose testimony I have already referred to several times, speaks this way: "I think the corporations have organized the relief departments not from philanthrophy, but because it is good business." He further says: "I think the economic motive is the motive of the corporations." (Hearings before the Industrial Commission on transportation, pp. 58–59.)

President Cowen, of the Baltimore and Ohio Railroad Company, in his evidence before this Commission, said: "And practically the effect of the relief department has been to almost entirely wipe out litigation with employees on account of injuries; not entirely, but almost entirely. I think really it is quite a rare case now for us to have much trouble with our employees."

If we had no more evidence, would not this admission make absurd any pretension that the relief departments were not organized for the purpose of saving damage suits?

But it is argued by the friends of the relief associations that anything that will save litigation is commendable. To my mind this is a wrong conception. I will agree, however, that anything that will remove the cause for litigation is commendable. We should not allow the railroad companies to escape the responsibility for injury to their employees, and then they would take more precautions to protect the lives and limbs of their employees; and the result would be a decrease in the number of accidents, and consequently the cause for litigation would be lessened. This would be going to the root of the evil, which is the right way to go about it.

It is said by those who have investigated this question that the companies contribute only about 16 or 20 per cent of the relief funds, but still they claim the right to make an employee release them from responsibility for injury before they will allow him to draw benefits from this fund of which he and his fellow employees have contributed over 80 per cent. For the paltry sum which is the company's contribution to the benefits he draws, he is deprived of the legal rights given him by the laws of the land. To plainly show the real injustice of this part of the scheme I will draw an example of how it works with an employee who is injured and is entitled by law to recover for such injury: An employee who is a member of the relief department loses an arm. We would say that the courts would allow him $5,000 for this injury. We will now say that he receives $100 from the relief fund, $20 of which the company has contributed. For this $20 he surrenders his right to the $5,000 which he is entitled to according to law, and he is out the difference between $20 and $5,000, which is $4,980.

As previously stated, the companies have the majority on the governing boards, and therefore practically make the laws and dictate the policy of these associations; and it is impossible for the employees' representatives to change these laws to an equitable basis.

I ask the question: If the employees contribute 80 per cent of the funds why should they not have a majority representation? I would like to be shown another business institution that is run in such an arbitrary manner. Where if you please, could we find a railroad president or director who owns the controlling interest in a road who would allow it to be run by the minority stockholders?

I have often heard the phrase used, "the tail wagging the dog," but it never presented itself so strongly to me as it does in this feature of the relief departments.

The amounts paid in disability and death claims by these associations are not commensurate with the amounts paid in dues. The insurance departments of our brotherhoods, and even the old-line insurance companies, give better rates. I have not had the time myself to go into this feature of the question and give you the exact figures, but I have here a very able and carefully prepared comparison made by one of the editors of our organizations, which I submit, as follows:

THE PLANT SYSTEM—RELIEF AND HOSPITAL DEPARTMENT.

We alluded to the philanthropic pose of Superintendent Dunham, of the Plant System, in our August number, and stated therein that in forcing his relief and hospital scheme on the employees it was compelling them to share the company's losses without sharing in its profits.

We have before us the printed application for membership which is headed "Plant System relief and hospital department." This document is too long for space at our disposal in this issue, and we will use such quotations as will answer our purpose at this time and if found necessary will publish in full later. This document is addressed to the superintendent and chief surgeon, and reads (the name and place added):

"I, Richard Roe, of Brunswick, Ga., desiring to be employed in the service of the companies constituting the Plant System as engineer in the train department, do hereby, as one of the conditions of such employment, apply for membership in the relief and hospital department, and consent and agree to be bound by all regulations of the relief and hospital department now in force, and by any other regulations of said department hereafter adopted."

It will be readily seen that employment in any capacity depends upon the physical possibility of the applicant coming within the requirements of the medical examination, which is more searching than the examination of any old-line insurance company, as it covers not only physical conditions but eyesight, hearing, and color list. And it is safe to say that no man, however proficient in the business, or how badly he may need work or they need his services, can obtain it only through the one channel, the relief and hospital department, and not then if for any reason the superintendent or medical examiner does not want him to pass. The application further says:

"I also agree that the said companies, or either of them, by its or their proper agents and in the manner provided in said regulations, shall apply monthly in advance, from the first wages earned by me under said employment in each calendar month, sums at the rate of —— per month as a condition to the relief and hospital department for the purpose of securing the benefits provided by said regulations for a member of class —— to myself, or in the event of my death to ———.

"I expressly stipulate that my marriage shall ipso facto have the effect to substitute my wife in the place and stead of the beneficiary named above to receive said benefits in the event of my death, if she be then living.

"I further agree that this application, when accepted by the superintendent and chief surgeon, shall constitute a contract between myself and the said companies, and each of them, as a condition of my employment by the company, governed in its construction and effect by the laws of the State of Georgia, and as such be an irrevocable power and authority to said companies, or either of them, to appropriate the above amounts from my wages and apply the same as aforesaid, and shall constitute an appropriation and assignment in advance to the said companies, or either of them, in trust for the purposes of the relief and hospital department, of such portions of my wages, which assignment shall have

precedence over any other assignment by me of my wages, or of any claim upon them on account of liabilities incurred by me.

"I further agree that in consideration of the contributions of said companies to the relief and hospital department, and of the guaranty by them of the payments of the benefits aforesaid, the acceptance of benefits from the said relief and hospital department for injury or death shall operate as a release of all claims against said companies, and each of them, for damages by reason of such injury or death which could be made by or through me; and that the superintendent and chief surgeon may require, as a condition precedent to the payment of such benefits, that all acts by him deemed appropriate or necessary to effect the full release and discharge of said companies, and each of them, from all such claims, be done by those who might bring suit for damages by reason of such injury or death; and also that the bringing of such a suit by me, my beneficiary, or legal representative, or for the use of my beneficiary alone, or with others, or the payment by any of the companies aforesaid of damages for such injury or death, recovered in any suit or determined by compromise, or of any costs incurred therein, shall operate as a release in full to the relief and hospital department of all claims by reason of my membership therein.

"I also agree, for myself and those claiming through me, to be specially bound by regulation No. 13, providing for the final and conclusive settlement of all disputes by reference to the superintendent and chief surgeon of the relief and hospital department; and an appeal from his decision to the committee on the relief and hospital department.

I understand and agree that this application, when accepted by the superintendent and chief surgeon shall constitute a contract between me and the said companies, and each of them, by which my rights as a member of said relief and hospital department and as an employee of said companies, or either of them, shall be determined as to all matters within its scope, that each of the statements herein contained and each of my answers to the questions asked by the medical examiner, and hereto annexed, shall constitute a warranty by me, the truth whereof shall be a condition of payment of any of the benefits aforesaid."

It will be noted that the applicant agrees that the acceptance of his application creates a fixed and immutable condition of his employment. He also agrees to obtain a release, if requested, from all parties who might come within the scope of law for bringing a suit against the company, and that the bringing of a suit shall act as a positive release of the companies' liability to pay any part of the indemnity accruing from his monthly payments and membership in the relief and hospital department. He also agrees that his rights in the indemnity department and his position as an employee shall rest upon the truth of his answers to the medical examiner, and without qualifications. One might state what he believed to be absolutely true of his own physical condition and still be as wide of the truth as many of the students with M. D. attached to their names in making an examination. The applicant takes this risk all to himself, as he does all the other risks incident to his employment and insurance with this philanthropic company. We append below the fixed and immutable condition of employment of all classes of employees on the Plant System. In this exhibit they take pains to say, "Free medical and surgical attendance by company's surgeons to all members," and that members must insure in the class their salary calls for. We shall see later whether medical attendance is free to anyone but the Plant company.

The Plant System relief and hospital department, what it costs, and benefits to be derived.

Class according to salary per month.	A.—$35 or under.	B.—Over $35 and not more than $50.	C.—Over $50 and not more than $75.	D.—Over $75 and not more than $100.	E.—More than $100.
Class according to employment.					
Cost per month:					
First class (those engaged in operating trains)	$1.25	$2.50	$3.50	$4.50	$5.50
Second class (not so engaged)	1.00	2.00	2.75	3.50	4.25

The Plant System relief and hospital department, what it costs, and benefits to be derived—Continued.

Class according to salary per month.	A.—$35 or under.	B.—Over $35 and not more than $50.	C.—Over $50 and not more than $75.	D.—Over $75 and not more than $100.	E.—More than $100.
First or second class.					
Benefits:					
For accidental injuries per day, not including Sundays—					
First 26 weeks	$0.50	$1.00	$1.50	$2.00	$2.5
After 26 weeks	.25	.50	.75	1.00	1.2
For sickness per day, not including first 6 working days or Sundays, for 52 weeks	.50	1.00	1.50	2.00	2.2
In event of death from—					
Accident	500.00	1,000.00	1,500.00	2,000.00	2,500.0
Natural causes	250.00	500.00	750.00	1,000.00	1,250.0

Free medical and surgical attendance by company's surgeons to all members. No charge will be made to members for care and treatment while in hospitals. For care of the families of members in company's hospitals, actual cost will be charged with an addition of 10 per cent.

Members employing other than the company's surgeons will do so at their own expense. Benefits will not be paid in such cases unless reported promptly on relief and hospital department Form 12.

Employees becoming members of the department must insure in the class their salary requires.

Now, the second class, not in train service, is necessarily made up of all the other classes that compose the necessary force employed; and as there are six classes listed in old-line companies before we come to hazardous, it will be fair to take the middle class, called ordinary, and turning to this column we find $1,000, and $7.50 weekly indemnity. Old-line company, 84¼ cents a month, or $10.12 a year; Plant System, $2 a month, or $24 a year; $1,500 old line, $7.50 weekly benefits, 94 cents a month, or $11.25 per year; Plant, same class, $2.75 per month, or $33 a year; $2,000 old line, $12 a week, $1.46 per month, or $17.52 per year; Plant, same class, $3.50 a month, or $42 per year; $2,500 old line, $12.50 per week, $1.56¼ a month, or $18.75 per year; Plant, same class, $4.25 per month, or $51 per year. In roads where hospital department only is maintained, the payments would, we think, not exceed $4.50, $6, $9, and $12 a year for these classes, and the Plant's excess charges over the old-line company is $13.88, $21.75, $24.48, and $32.25 a year—almost three times as much as the cost of hospital maintenance. This looks like a good big margin for the Plant System, and we will leave the reader to estimate whether the medical service is free or whether the employee pays the bill. And when we realize, as we all do, that a very small percentage of the above class get killed, and consequently the maturing claim by natural death being paid only one-half, we do not think the Plant System will be bankrupt by its philanthropy. Now we will make a comparison of the other class—"extra hazardous," as they are listed by the old-line companies.

Now, the condition for an engineer or conductor who earns more than one hundred dollars a month is a payment of $5.50 per month, or $66 a year, on a $2,500 policy, with $15 weekly indemnity for 26 weeks, and one-half, or $7.50, if he is disabled more than 26 weeks, and full payment on his policy if he is killed while on duty in the service of the company; but if he dies from other causes he receives only $1,250, and benefits on account of accidental injury will be paid only when shown by evidence satisfactory to the superintendent to have been received while actually engaged in the performance of duty in the service of the company.

Now, the old-line schedule before me lists $2,500, extra hazardous, $15 weekly indemnity, at $4.26 a month, or $51.36 a year, and full payment of $2,500 whether killed following his occupation or otherwise or dies a natural death. And when we understand that about sixty of every one hundred maturing policies under the Plant System would only receive $1,250, because 60 per cent die natural deaths, and that indemnity is not paid when injury is received when not on duty, it does not take long to fathom the incentive that actuates its superintendent in adopting this means of relieving the Plant Company of sustaining its legitimate liabilities, and possibly having something left, and with no means provided by which one of these employees who have paid excess charges over Engineers—a difference of $271,250; this, added to the $258,863 excess payment,

cost of maintenance ever getting any of it back. And if they are discharged or leave the service of the company these accumulations, which are sure to accrue, remain the property of some one—Who?

Now, we will make a comparison with the Brotherhood of Locomotive Engineers' Mutual Life and Accident Association. This is the extra-hazardous risk. For the twelve months ending July 20, 1896, there were 141 natural deaths, 78 killed and died from injuries received, 17 loss of hand or foot, and 22 loss of eye, a total of 253. Of the killed, 1 was thrown from his horse, 3 died from gunshot wounds, 1 thrown from a buggy, 1 drowned, and 1 killed in a cyclone, and these the Plant would pay half or declare them forfeited entirely. The cost of carrying $2,500 in the Brotherhood of Locomotive Engineers' Mutual Life and Accident Association for the past year, with 39 liabilities maturing for loss of hand, foot, or eye, has been $41.66, and the cost of weekly indemnity equal to the Plant is carried on in many of our divisions for 75 cents a month, or $9 a year, making a total of $50.66 for $2,500, with weekly indemnity and the policy always paid in full. Now, let us see what the difference would amount to paid in full, as the Brotherhood of Locomotive Engineers does, and natural deaths one-half, as the Plant System does. Two hundred and fifty-three policies maturing at $2,500 amounts to $630,000. Now, the Plant System would only pay in full for those killed—78—$182,500. As they would not pay for loss of hand or eye, they would only pay on the 141 natural deaths $176,251; total, $358,750. In favor of the Plant Company, $271,250 on policy payments only, as compared with the Brotherhood of Locomotive Engineers' insurance. If the Brotherhood of Locomotive Engineers paid its policy holders on the same basis the Plant does, it would cost but $22.50 a year to pay the bill and cost of collecting. Now, the men on the Plant System have paid $15.34 a year more for their risk being carried by the Plant than the Brotherhood of Locomotive Engineers' insurance has cost its members, and they have paid $14.64 more than an old-line company would ask, and on the ordinary class almost three times as much as the rate in an old-line company.

For further comparison we will take the number carried by the Brotherhood of Locomotive Engineers' insurance department which are all extra hazardous, and in which all payments are made in full, and loss of hand, eye, or foot paid the same as on death, which will give 39 more maturing policies than in either the Plant or the old-line company. For the information of the members of the Brotherhood of Locomotive Engineers' insurance we will take the average number carried during the year, our figures being based on the actual records of the insurance assessments for that time. We will give the amount of cost to the insured to carry $2,500 and $15 a week in each of the three and deduct the amount that would be paid on matured policies in each, leaving the balance to cover weekly indemnity, profit, or surplus.

In the Brotherhood of Locomotive Engineers' insurance 16,860 members pay in $50.66 a year, or a total of $854,127.60, and receive on 253 matured policies (the last year's record as to actual number of policies paid) $630,000, leaving balance of $224,127.60 to meet weekly indemnities. The old-line companies' figures on same number would be: Paid in by insured, at $51.36 a year, $865,929. As they do not pay for loss of hand, foot, or eye, we will deduct 17 for loss of hand or foot and 22 for loss of eye, a total of 39, leaving matured policies in old-line company 214 instead of 253, and this total would be $535,000. This deducted from the amount paid in would leave a balance of $330,929 to meet weekly indemnity claims, commissions, and profits—$106,801.40 more than the Brotherhood of Locomotive Engineers. The Plant System of payments, $66 a year on 16,860 members, would amount to $1,112,760, and they, like the old-line company, do not pay for hand, foot, or eye, and would stand at 214, same as the other. Besides this, however, they do not pay but half on natural deaths; so the account would stand (taking our record again), accidental deaths, 73, at $2,500, $182,500; natural deaths, 141, at $1,250=$176,251, or a total of $358,750, and there has been $1,112,760 paid in, leaving a balance in favor of the Plant of $754,010—$529,873 more than the Brotherhood of Locomotive Engineers.

Now, the members of the Brotherhood of Locomotive Engineers' insurance pay in $11,802 less than the same risk in an old-line company, and pay out for loss of hand, foot, or eye 39 matured claims, amounting to $98,500, and having paid in $11,802 less the saving would stand $110,302 in favor of the Brotherhood of Locomotive Engineers' insurance. And when we compare it with the Plant System the members of the Brotherhood of Locomotive Engineers' insurance would pay in $258,863 less, and get in return, as we have shown, but $358,750 on matured policies in lieu of $630,000 from the Brotherhood of Locomotive

shows the cost to be greater than that of the Brotherhood of Locomotive Engineers by $530,113. Our exhibit shows a balance to meet weekly indemnity of $224,127.60, the old-line companies' indemnity fund as $330,929, and the Plant as $754,000. We have not considered the greater factor in proportion to the number employed in railroad service which do not come under the class of extra hazardous, and by examination it will be found that the saving for some one besides the insured in that class is very much greater in percentage, and while the number employed on the Plant System we presume is considerably smaller than that we have used in this article, we think we are safe in saying that this philanthropic Superintendent Dunham will be able without much difficulty to figure out enough to at least pay the doctors and do so without using any of the Plant System's earnings, but get it out of the pockets of the employee, not by voluntary contribution, but by a system of coercion, the employee being afraid to do otherwise, fearing the loss of position. There are other railroad companies that have paternalism with similar conditions, but it has been left for Superintendent Dunham to reach the extreme in compelling the employee to more than pay the company's losses without sharing in its profits. The owners of the Plant System can not relieve themselves of their responsibility for having a tyrant as their business manager, who resorts to every kind of scheme of good or ill repute to foster his or their interests.

I presume there are those interested in the Plant Relief and Hospital Association who will try to deny the statements in this article, and to show that the company is not only doing their share toward expense, and are really actuated by a love of caring for their employees, but in doing so—if they wish to be honest in it—they must first show what had been the legitimate cost of medical attendance on the company's business before the employee began to pay the bills and also show the real diminution of the expense of their legal department, by virtue of the contract the employee signs, forfeiting his claims to the benefits which should accrue to him from his own payments into the relief and hospital fund, if he or any of his heirs or assigns should presume to sue the company, even though the injury was caused by the grossest carelessness on the part of the officials of the company themselves. There are those who maintain that the employees like these associations—the contract, compulsory part, and all—but the best explanation of that is that they do not like to say they do not like it.

The readers can infer as much as they like. There is a redeeming quality in hospital departments rightly conducted. Where the collections from the employees are moderate, and where there is no ironbound contract to relieve the company of its rightful obligation to pay legitimate claims against it, and in which there does not enter the speculation-fostering features of the others, there is a streak of charity in it, and though one never expected to be benefited by it personally, having a home of his own, they willingly contribute for the benefit of others whose circumstances differ. There is a good chance in hospital system relieved of the other feature for company officials to be actuated by a meritorious desire to benefit and relieve suffering humanity when the occasion requires it. We believe the public should know what is the real intent and purpose of the man at the head of the Plant System. That it is not charity, they need not be told; that it is gain, pure and simple, is self-evident, and ought to be condemned. He has denied the employee the right to a voice in any condition as associated with the Plant System, and they have no voice in this relief and hospital department. They are requested not to use their voices, but a pen to sign away their liberties at the command of Superintendent Dunham or suffer discharge.

This article was prepared by Mr. C. H. Salmons, the editor and manager of the Locomotive Engineer's Journal, and was printed in that journal for September, 1896; and Mr. Salmon writes me that no one has so far understaken to disprove any of the statements contained in it.

One of the great luring promises put forth by the relief departments is the pension feature. This is also looked upon with suspicion by the men, as they claim that a man who has stamina enough about him to protest against unfavorable conditions being imposed upon him will not be allowed to remain in the service long enough to be put upon the pension list; and they prefer to look after their own future rather than have paternalism exercised over them by the companies.

The Interstate Commerce Commission, in its Thirteenth Annual Report, in touching on the question of relief departments, said:

"There are some conditions imposed upon members by the relief departments which have provoked no little criticism. For instance, objection is made that two of the railroad companies make membership a condition of employment; *another objection is that*, generally, membership is forfeited when the em-

ployee's service in the company terminates, and still another is that all the relief departments provide that an employee or his beneficiary, by accepting the benefits offered by the relief, thereby waives any legal right to recover damages against the company in case of injury or death caused by accident. It is also urged against these relief departments that they create in the mind of the employee a sense of dependence on the continued good will of the employer, since any beneficial interest in the relief fund ceases upon the discharge of the employee or his voluntary retirement from the employer's service. Moreover, when contracts are exacted requiring membership of relief departments as a condition of receiving employment, there is said to be a tendency toward, if not the actual assumption of, powers which ought not to be exercised by railway corporations." (Tenth Annual Report of the Interstate Commerce Commission, p. 111.)

The following are a few editorials from the journals of our organizations, which contain some very good arguments against these relief associations, and will, I believe, be of some assistance to the Commission:

"One of his admirers, in writing of the life of Mr. McLead, declared him to be a democrat in his dealings with his employees, and in support of his statement said there was no hand on the Reading so much covered with dust and grease that the president would not shake it. Another proof of his solicitude for his employees was made as follows: 'The first thing he did upon assuming prominence in the company was to start a relief association among the men, which has a membership of 15,216 and a surplus in the treasury of $228,480.43. The receipts of the association last year were $262,787.28 and the disbursements were $241,101.91. It is administered by an advisory board composed of ordinary employees and a number of the representatives of the Reading's board of managers.' This looks good and sounds better, but the romance and sentiment attached to the story can not bury the truth. * * * There is not the first principle of democracy in any part of it, although there is an assumption of such in allowing ordinary employees to meet and hear the managers of the road direct the government of the association. The fact that the board of managers have their representatives to assist gives a pretty fair idea how far the wishes of the employees are allowed to govern. Membership in this far-sighted and benevolent association is made a condition of employment; promise not to join any labor organization, or to withdraw from those already joined, is part of the same contract drawn by this democrat. Under the guise of philanthropy this association has taken from the men on the system in one year over $262,787 and given them in return $241,101, while the balance is kindly held for them by the company, which is anything but a reliable depository: This same democrat would have extended his pet scheme to the leased lines had the employees of those lines not met the proposition with organized and determined resistance, and had system federation not been in force among the organizations of railroad employees on the leased lines, they too would be paying tribute to this, the greatest philanthropic fake the workingmen of this country have ever had to submit to. Their combined front presented in opposition to this infamous proposition alone saved them from the humiliation of placing their necks under this oppressive yoke." * * * (Railroad Trainmen's Journal for May, 1893, p. 381.)

The Railway Conductor for March, 1897, page 180, speaking on a law introduced in Iowa to declare void all contracts wherein employees waived their rights to recover for injuries by accepting benefits from relief departments, says:

"This is the substance of the contention we have always made upon this subject, and is no more than common sense and common justice would dictate. When men are compelled to pay for their insurance it is their property, no matter whether it be the company employing them or some private corporation selling the insurance, and the fact that they accept insurance for which they have paid should have no more bearing upon their right to collect from the company for damages received than the acceptance of groceries upon the same terms. So long as the men are obliged to support the insurance they should be protected in their right to the product of their investment, and the companies should not be allowed to exploit them in this way in order to save having to pay for damages wrongfully inflicted. The measure is a just one and should be made law, not only in Iowa, but in all the States where similar attempts are being made to compel railroad men to insure themselves against the ignorance or carelessness of others in the interest of the employing corporations.

"RELIEF ASSOCIATION CONTRACTS.

"This subject has attracted the attention of railway employees to an unusual degree of late, and has been brought prominently to the attention of legislators

by the numerous appeals on the part of railway employees for legislation which would more fairly protect their interests than that which now exists.

"Voluntary or so-called voluntary relief associations, practically or wholly controlled by the employing corporation, and in which their employees or seekers after employment are required to hold membership or declare their willingness to do so, have always been distasteful to the employees. Aside from the natural resentment felt by the employee, the principal objection to these relief associations lies in the fact that the employee, upon becoming a member of the association, is required to sign a contract under which if he is injured while in the discharge of his duties and accepts the temporary financial relief provided by the association, he relinquishes and releases all right to recover damages against the employing corporation through suit at law. On the one hand, it is held that the man in search of employment, and who has behind him the imperative duty of providing for those who are dependent upon his daily toil for sustenance, will not hesitate long about signifying his willingness to become a member of the relief association.

"It is claimed that the contract releasing the company from liability for damages in consideration of receiving benefits from the association is secured under duress; that it is against public policy; that it lacks the essential to all contracts—consideration; that it strikes down the voluntary right to contract, and that it lacks mutuality. On the other hand, all these claims are denied and it is claimed that the contract is a purely voluntary one. It is said that the employee can elect for himself, in the event of his receiving personal injury, whether he will relinquish his claim against the relief association or release his right to attempt to recover through appeal to the courts. Inasmuch as the employee can secure insurance against accident, and even against illness from many causes, without any conditions other than the payment of the premium, and that premium but slightly, if any, higher than that paid to the relief association, it can not be said that the association is maintained through a spirit of pure magnanimity. It is established and mantained as a means of escaping legal liability for personal injuries to employees.

"At the last session of the Iowa legislature an amendment to the laws of the State abrogating and avoiding such contracts of release of liability was the occasion of the most earnest and spirited contest during the session. In the closing hours of the session the amendment was defeated in the senate, having been passed by a very large majority of the house. It will undoubtedly be again introduced at the next session, and one, at least, of its strongest opponents in the last session has declared his intention of supporting it in the future." (Editorial from the Railway Conductor for November, 1897, p. 753.)

The following resolution was adopted by the State legislative board of railroad employees of Pennsylvania, at its meeting at Sunbury, Pa., April 21, 1900:

"Whereas the relief associations now operated by the Baltimore and Ohio, Pennsylvania, and Philadelphia and Reading Railroad companies impose unfair conditions on the employees of said roads, inasmuch as the employees are required to pay the largest part of the money that goes to make up the funds, but are denied the right of majority representation on the managing boards, and are required to release the companies from responsibility for injury before they can receive benefits from these funds which they themselves have furnished the greatest part of; and as membership in these associations is practically compulsory, it keeps employees out of labor organizations, as many of them find it difficult to pay the dues in both, and they are therefore denied the benefits and protection which labor organizations give them, and in consequence are left more to the mercy of the companies; and as these roads branch out and absorb new lines, these unjust conditions are imposed upon the employees of the new lines taken in: Therefore, be it

"*Resolved*, That we condemn these associations, and assert that instead of their object being that of benevolence, as claimed by the companies, they are based upon iniquitous principles, controlled by arbitrary laws, and are in violation of the laws of Congress; and we earnestly ask Congress to investigate these associations and pass a law that will prevent their being further imposed upon railroad employees."

It may be said, as has been said before, that these are only the utterances of the officers and leaders of the organizations, and they do not express the feeling of the empolyees toward these relief departments, and that the employees are perfectly satisfied. President Cowen, of the Baltimore and Ohio Railroad Company, said in his testimony before this commission:

"I believe that the arrangement is not only a perfectly fair one, but I think

t is one which is approved by 99 per cent of our men." (Hearings before the ndustrial Commission on transportation, p. 306.)

I want to say that Mr. Cowen either did not know what he was talking about or tried to misrepresent matters to this Commission. Which was the case I am, of course, unable to say. I had talked with many employees of the Baltimore and Ohio Railroad, and never heard one of them say that he was satisfied with the relief department, but after reading this statement of Mr. Cowen's I concluded that it was proper that this Commission should be furnished with evidence coming directly from the employees; so, with the approval of Grand Master Morrissey, of the Brotherhood of Railroad Trainmen, I sent a copy of the following circular to each lodge of that organization located on the Baltimore and Ohio and Pennsylvania railroads:

THE RALEIGH,
Washington, D. C., February 10, 1900.

To all Lodges of the Brotherhood of Railroad Trainmen on the Baltimore and Ohio and Pennsylvania Railroads.

DEAR SIRS AND BROTHERS: The United States Industrial Commission is investigating the subject of "Railroad relief departments," and as I have been requested by the Commission to appear before it in the near future and give testimony upon this and several other questions in which we are interested, I desire to be in a position to state to the Commission exactly how the employees feel toward these associations, and would respectfully ask you to furnish me, over the signatures of your master and secretary and under lodge seal, answers to the questions submitted on attached blank.

Kindly fill out this blank and return to me at Hotel Raleigh, Washington, D. C., in the inclosed envelope at your earliest convenience. Care will be taken to protect the officers signing this statement.

Fraternally, yours,

H. R. FULLER.

CLEVELAND, OHIO, *February 11, 1900.*

Circulation of this letter with accompanying questions is approved.

P. H. MORRISSEY, *Grand Master B. R. T.*

Name of railroad system upon which your lodge is located? ———
Number of members of your lodge employed on said system? ———
(1) Is membership in the relief department considered by the employees to be voluntary or compulsory? ———
(2) Do men who seek employment receive it if they do not make application for membership in the relief department? ———
(3) Is the blank application for membership in the relief department handed to the new employee without solicitation on his part? ———
(4) Are the actions of the company's representatives such as to make him believe that the filling out of this blank by him is necessary for him to secure employment? ———
(5) Are employees who are already in the service and not members of the relief department coerced or intimidated into joining it? ———
(6) If so, in what way is this generally done? ———
(7) Is the amount deducted from the pay of the employees each month by the company considered by them to be a voluntary contribution on their part, or do they consider that they are required by the company to pay this amount to the relief department? ———
(8) Do you think membership in the relief department has a tendency to keep members out of labor organizations on account of their being unable to pay the dues in both? ———
(9) Are members of the relief department granted special privileges over those who are not members? ———
(10) Do the employees consider it fair that upon receiving benefits from the relief department they should be required to release the company from responsibility for injury? ———
(11) Do you agree with the opinion that the prime objects of the railroad companies in operating relief departments are to deprive the employees of their right to recover for injury and to alienate their interests from our brotherhoods? ———
Location of lodge, ———; date, ——— ——, 1900; name of lodge, ———; No. of lodge, ———.
[SEAL.]
——— ———, *Master.*
——— ———, *Secretary.*

The following *table* shows the result of the answers of the employees of the *Pennsylvania Railroad* to these questions:

PENNSYLVANIA RAILROAD.

Lodge No.	State.	City or town.	Is membership in the relief department considered by the employees to be voluntary or compulsory?	Do men who seek employment receive it if they do not make application for membership in the relief department?	Is the blank application for membership in the relief department handed to the new employee without solicitation on his part?	Are the actions of the company's representative such as to make him believe that the filling out of this blank by him is necessary for him to secure employment?	Are the employees who are already in the service and not members of the relief department coerced or intimidated into joining it?	If so, in what way is this generally done?	Is the amount deducted from the pay of the employees each month by the company considered by them to be a voluntary contribution on their part, or do they consider that they are required by the company to pay this amount to the relief department?	Do you think membership in the relief department has a tendency to keep members out of labor organizations on account of their being unable to pay the dues in both?	Are members of the relief department granted special privileges over those who are not members?	Do the employees consider it fair that upon receiving benefits from the relief department they should be required to release the company from responsibility for injury?	Do you agree with the opinion that the prime objects of the railroad companies in operating relief departments are to deprive the employees of their right to recover for injury and to alienate their interests from our brotherhoods?
123	Delaware.	Wilmington	Compulsory.	Yes.	Yes.	No.	Yes.	They claim relief is a benefit and will give members preference in laying off men.	Required.	Yes.	Yes.	No.	Yes.
523	do	do	do	Yes.	Yes.	Yes.	Yes.	By company's officers continually boring us, saying it is to our interest to join it.	do	Yes.	Yes.	No.	Yes.
424	Illinois	Chicago	do	No.	Yes.	Yes.	Yes.	By sometimes telling them one thing, and sometimes another, or that it would be a good thing.	do	Yes.	Yes.	No.	Yes.
261	Indiana	Indianapolis	do	No.	Yes.	Yes.	Yes.	Brakemen are never promoted who do not belong to the so-called "Voluntary relief."	do	Yes.	Yes.	No.	Yes.
109	do	Logansport	do	No.	Yes.	Yes.	Yes.	By train master calling them up several times and urging them by coercive language and actions.	do	Yes.	No.	No.	Yes.
16	do	New Albany	do	No.	Yes.	Yes.	Yes.	Men who do not belong will not get better positions.	do	Yes.	Yes.	No.	Yes.

								them they are standing in their own light by not joining.			say.		
267	New Jersey.	Camden	do	Sometimes.[b]	Yes	Sometimes.	Yes	They are told by the officials it is for their interest. Some consider this a threat.	do	Yes	Yes	No	Yes.
119	do	Jersey City	do	No	Yes	Yes	Don't know.		do	Yes	No	No	Yes.
514	do	do	do	No	Yes	Yes	No		do	Yes	No	No	Yes.
552	do	South Amboy	do	Yes	Yes	Yes	Yes	Company's representative tell you if you belong to relief you will be on the steady list.	do	Yes	Yes	No	Yes.
38	do	Trenton	do	No	Yes	Yes	No		do	Yes	No	No	Yes.
239	do	do	do	No	Yes	Yes	Yes	By canvass made by the advisory board. Men join to hold their positions.	do	Yes	Yes	No	Yes.
413	New York	Elmira	do	No	Yes	Yes	Yes	They tell you the best thing to do is to join the relief.	do	Yes	Yes	No	Yes.
84	Ohio	Ashtabula	do	No	Yes	Yes	Yes	By train master asking employees to join relief.	do	Yes	Yes	No	Yes.
260	do	Cleveland	Almost compulsory.	Yes	No	No	No		(e)	Yes	No	No	Don't know.
175	do	Columbus	Compulsory	No	Yes	Yes	Yes	You are simply requested to become a member of the relief department.	Required	Yes	No	No	Yes.
421	do	Dennison	do	No	Yes	Yes	Yes	By asking them to join	do	Yes	Yes	No	Yes.
478	do	Mansfield	do	No	Yes	Yes	Yes	The company hands the employee a blank and requests him to fill it out.	do	Yes	No	No	Yes.
79	do	Massillon	do	No	Yes	Yes	Yes	By continually soliciting	do	Yes	Don't know.	No	Yes.
21	do	Youngstown	do	No	Yes	Yes	Yes	Employer tells him that he better join if he ever expects anything in the way of promotion.	do	Yes	(d)	No	Yes.
465	Pennsylvania.	Allegheny	Voluntary[c]	Yes	No	No	No		Voluntary	Yes	No	No	Yes.
106	do	do	Compulsory	No	Yes	Yes	Yes	By having old employees go around to nonmembers and ask them to join.	Required	Yes	Yes	No	Yes.
571	do	Carnegie	do	No	Yes	Yes	Yes	By asking nonmembers to join, telling them they should belong.	do	Yes	No	No	Yes.
117	do	Columbia	do	No	Yes	Yes	Yes	By giving preference to employees who are members of relief department.	do	Yes	Yes	No	Yes.
386	do	Conemaugh	do	No	Yes	Yes	Can not say.		do	Yes	Can not say.	No	Yes.
159	do	Derry Station	do	No	Yes	Yes	Yes	By calling them to the office or by letter.	do	Yes	Yes	No	Yes.
199	do	Erie	do	No	Yes	Yes	Yes	By solicitation, and employee feels in some way that his position is more secure if he is a member.	do	Yes	No	No	Yes.

[a] But are advised to join relief.
[b] But are asked to join when employed.
[c] Members of relief satisfied to pay dues.
[d] Not noticeable, as only a few are not members.
[e] Although most all have been asked to join.

PENNSYLVANIA RAILROAD—Continued.

Lodge No.	State.	City or town.	Is membership in the relief department considered by the employees to be voluntary or compulsory?	Do men who seek employment receive it if they do not make application for membership in the relief department?	Is the blank application for membership in the relief department handed to the new employee without solicitation on his part?	Are the actions of the company's representative such as to make him believe that the filling out of this blank by him is necessary for him to secure employment?	Are the employees who are already in the service and not members of the relief department coerced or intimidated into joining it?	If so, in what way is this generally done?	Is the amount deducted from the pay of the employees each month by the company considered by them to be a voluntary contribution on their part, or do they consider that they are required by the company to pay this amount to the relief department?	Do you think membership in the relief department has a tendency to keep members out of labor organizations on account of their being unable to pay the dues in both?	Are members of the relief department granted special privileges over those who are not members?	Do the employees consider it fair that upon receiving benefits from the relief department they should be required to release the company from responsibility for injury?	Do you agree with the opinion that the prime objects of the railroad companies in operating relief departments are to deprive the employees of their right to recover for injury and to alienate their interests from our brotherhood?
263	Pennsylvania.	Harrisburg	Compulsory	No	Yes	Yes	Yes	Are called to office and asked why they don't join relief; are told it is to their interest to do so.	Required	Yes	Yes	No	Yes.
42	do	do	do	No	Yes	Yes	Yes	They are requested to do so by written request from train master of their respective divisions.	do	Yes	No	No	Yes.
874	do	do	do	No	Yes	Yes	Yes	By officers calling you to office and insinuating that the best thing you can do is to join relief.	do	Yes	Yes	No	Yes.
137	do	do	do	No	Yes	Yes	Yes	By holding you off till you do join, and agitating the matter all the time until you do join.	do	Yes	Yes	No	Yes.
496	do	Huntingdon	do	No	Yes	Yes	Yes	do	do	Yes	Yes	No	Yes.
223	do	Newcastle	do	No	Yes	Yes	Yes	By handing them membership blanks from time to time.	do	Yes	Yes	No	Yes.

160	.....do....	W. Philadelphia.	.....do.....	No....	Yes.....	Yes...	No.....	.....	.....do	Yes.....	Yes.....	No....	Yes.
286	.....do....	Renova.....	Voluntary...	Yes...	No.....	No....	Yes.....	By committeemen of advisory board..	.....do	Yes.....	No.....	No....	Yes.
7	.....do....	Pittsburg.....	Compulsory .	(c)	Yes.....	Yes...	Yes.....	By communication and by request....	.....do	Yes.....	Yes.....	No....	Yes.
225	.....do....	.....do.....	.....do.....	No....	Yes.....	Yes...	Yes.....	In case there is a reduction in the force the ones that belong are retained in service.	.....do	Yes.....	Yes.....	No....	Yes.
68	.....do....	Scottdale.....	.....do.....	No....	Yes.....	Yes...	Yes.....	.....	.....do	Yes.....	Yes.....	No....	Yes.
521	.....do....	Sharon	.....do.....	Yes[d]..	Yes.....	Yes...	.....	.....	.....do	Yes.....	.....	.....	Yes.
43	.....do....	Sunbury.....	.....do.....	Sometimes.	Yes.....	No....	Yes.....	A member of the advisory board goes to see him and tries to get him in.	.....do	Yes.....	No.....	No....	No.
408	.....do....	Tyrone	.....do.....	No....	Yes.....	Yes...	Yes.....	By underofficials notifying you that you had better join, as the company desires it, etc.	.....do	Yes.....	Yes.....	No....	Yes.
490	.....do....	Uniontown...	.....do.....	(c)	Yes.....	.....	Yes.....	By handing or sending him a blank application.	.....do	Yes.....	Yes.....	No....	Yes.

[a] Undecided by members present.
[b] Applicant sent to doctor before employed.
[c] In some cases.
[d] But they don't last long.
[e] When employed are presented with blank.

The total number of lodges making replies to the questions was 45. They came from 36 cities and towns in 8 different States, and represent 4,0[illegible] members.

According to the answers received to question 1, 96 per cent say that membership in the relief department is considered by the employees to be compulsory.

In answer to question 2, 78 per cent say that men who seek employment do not receive it if they do not make application for membership in the relief department.

In answer to question 3, 94 per cent say the blank application for membership in the relief department is handed to the new employee without solicitation on his part.

In answer to question 4, 83 per cent say that the actions of the company's representatives are such as to make him believe that the filling out of this blank by him is necessary to secure employment.

In answer to question 5, 85 per cent say that employees who are already in the service and not members of the relief department are coerced or intimidated into joining it.

The answers to question 6 show the numerous coercive tactics employed by the company to get the employees to join the relief department. Couple these to the statement made by a railroad manager to Prof. E. R. Johnson, "That he did not care whether it was compulsory to join the association or not, for the reason that the indirect pressure that the corporation could bring to bear would accomplish the same result," and I think it clearly proves that the employees are required to join these associations against their will. (For statement of railroad manager here referred to, see Hearings before Industrial Commission on Transportation, p. 57.)

In answer to question 7, 97 per cent say that the amount paid into the relief fund by the employees is not a voluntary contribution, but that they are required by the company to pay it.

In answer to question 8, 100 per cent say that they think membership in the relief department has a tendency to keep members out of labor organizations on account of their being unable to pay the dues in both.

In answer to question 9, 57 per cent say that members of the relief department are granted special privileges over those who are not members.

In answer to question 10, 100 per cent say that they do not consider it fair that upon receiving benefits from the relief department they should be required to release the company from responsibility for injury.

In answer to question 11, 92 per cent say that they agree with the opinion that the prime objects of railroad companies in operating relief departments are to deprive the employees of the right to recover for injury and alienate their interests from our brotherhoods.

The following table shows the result of the answers of the employees of the Baltimore and Ohio Railroad to the questions:

BALTIMORE AND OHIO RAILROAD.

Lodge No.	State.	City or town	Is membership in the relief department considered by the employees to be voluntary or compulsory?	Do men who seek employment receive it if they do not make application for membership in the relief department?	Is the blank application for membership in the relief department handed to the new employee without solicitation on his part?	Are the actions of the company's representatives such as to make him believe that the filling out of this blank by him is necessary for him to secure employment?	Are employees who are already in the service and not members of the relief department coerced or intimidated into joining it?	If so, in what way is this generally done?	Is the amount deducted from the pay of the employees each month by the company considered by them to be a voluntary contribution on their part, or do they consider that they are required by the company to pay this amount to the relief department?	Do you think membership in the relief department has a tendency to keep members out of labor organizations on account of their being unable to pay the dues in both?	Are members of the relief department granted special privileges over those who are not members?	Do the employees consider it fair that upon receiving benefits from the relief department they should be required to release the company from responsibility for injury?	Do you agree with the opinion that the prime objects of the railroad companies in operating relief departments are to deprive the employees of their right to recover for injury and to alienate their interests from our brotherhoods?
526	Delaware	Wilmington	Compulsory	No	Yes	Yes	Yes		Required	Yes	Yes	No	Yes.
4	Illinois	Chicago	do	No	Yes	Yes	Yes	By being sent to medical examiner and examined, and then you become a member.	do	Yes	Can not say.	No	Yes.
158	Indiana	Garrett	do	No	Yes	Yes	Yes	Superintendent requests them to join.	do	No	Yes	No	Yes.
16	do	New Albany	do	No	Yes	Yes	Yes	Men who do not belong will not get better positions.	do	Yes	Yes	No	Yes.
453	Maryland	Baltimore	do	No	Yes	Yes	Yes	By insinuating that it would be to his interest as an employee to join the relief department.	do	Yes	No	No	Yes.
488	do	do	do	No	Yes	Yes	All are members.		do	Yes	(a)	No	Yes.

a All compelled to join before receiving employment.

BALTIMORE AND OHIO RAILROAD—Continued.

Lodge No.	State.	City or town	Is membership in the relief department considered by the employees to be voluntary or compulsory?	Do men who seek employment receive it if they do not make application for membership in the relief department?	Is the blank application for membership in the relief department handed to the new employee without solicitation on his part?	Are the actions of the company's representatives such as to make him believe that the filling out of this blank by him is necessary for him to secure employment?	Are employees who are already in the service and not members of the relief department coerced or intimidated into joining it?	If so, in what way is this generally done?	Is the amount deducted from the pay of the employees each month by the company considered by them to be a voluntary contribution on their part, or do they consider that they are required by the company to pay this amount to the relief department?	Do you think membership in the relief department has a tendency to keep members out of labor organizations on account of their being unable to pay the dues in both?	Are members of the relief department granted special privileges over those who are not members?	Do the employees consider it fair that upon receiving benefits from the relief department they should be required to release the company from responsibility for injury?	Do you agree with the opinion that the prime objects of the railroad companies in operating relief departments are to deprive the employees of their right to recover for injury and to alienate their interests from our brotherhoods?
447	Maryland.	Baltimore	Compulsory.	No.	Yes	Yes	All belong		Required.	Yes		No.	Yes.
497	do	Brunswick	do	No.	Yes	Yes	Yes	By being dismissed for slight offenses.	do	Yes	Yes	No.	Yes.
267	do	South Cumberland.	do	No.	Yes	Yes	Yes	We know of one case where employee was called from his work and sent to medical examiner's office to make application.	do	Yes	(a)	No.	Yes.
482	Ohio	Akron	do	No.	Yes	Yes	Yes	By giving men behind work over them and running younger men around them. Held off until you become a member.	do	Yes		No.	Yes.
425	do	Chicago	do	No.	Yes	Yes	Yes		do	Yes	Yes	No.	Yes.
175	do	Columbus	do	No.	Yes	Yes	Yes	You are simply requested to become a member of the relief department.	do	Yes	No	No.	Yes.

478	.....do....	Mansfield	.....do.....	No....	Yes.....	Yes...	Yes.....	They compel employee to join before going to work.	.....do....	Yes.....	No.....	NO....	Yes.
169	.....do....	Newark	.....do.....	No....	Yes.....	Yes...	Yes.....	A conductor who does not belong can not run a passenger train.	.....do....	Yes.....	No.....	No....	Yes.
21	.....do....	Youngstown	.....do.....	No....	Yes.....	Yes...	Yes.....	By letter from medical examiner.	.....do....	Yes.....	Yes[a].....	No....	Yes.
378	Pennsylvania.	Bennett	.....do.....	No....	Yes.....	Yes...	Can not say.	.....	.....do....	Yes.....	No.....	No....	Yes.
215	.....do....	Connellsville.	.....do.....	No....	Yes.....	Yes...	Yes.....	If promoted to conductor, they send you to medical examiner to have insurance increased.	.....do....	Yes.....	Yes.....	No....	Yes.
457	.....do....	Foxburg.....	.....do.....	No....	Yes.....	Yes...	All belong	.....	.....do....	Yes.....	Don't know.	No....	Yes.
244	.....do....	Glenwood	.....do.....	No....	Yes.....	Yes...	All are members.	.....	.....do....	Yes.....	No[d].....	No....	Yes.
518	.....do....	McKeesport ..	.....do.....	No....	Yes.....	Yes...	Yes.....	You have to belong to the relief or you can not work.	.....do....	Yes.....	Yes.....	No....	Yes.
222	.....do....	Newcastle	.....do.....	No....	Yes.....	Yes...	Yes.....	By handing them membership blanks from time to time.	.....do....	Yes.....	Yes.....	No....	Yes,
387	.....do....	Philadelphia.	.....do.....	No....	Yes.....	Yes...	All belong	No one is given employment who is not willing to join relief department.	.....do....	Yes.....	All belong..	No....	Yes.
179	.....do....	Pittsburg	.....do.....	No....	Yes.....	Yes...	Yes.....	By being held off until they join relief department.	.....do....	Yes.....	.....do.....	No....	Yes.
490	.....do....	Uniontown...	.....do.....	No....	Yes.....	Yes...	All belong	.....	.....do....	Yes.....	.....do.....	No....	Yes.
362	West Virginia.	Martinsburg..	.....do.....	No....	Yes.....	Yes...	Yes.....	The company expects it.....	.....do....	Yes.....	.....do.....	No....	Yes.
355	.....do....	Parkersburg..	.....do.....	No....	Yes.....	Yes...	All belong	.....	.....do....	Yes.....	.....do.....	No....	Yes.
110	.....do....	Wheeling.....	.....do.....	No....	Yes.....	Yes...	No.....	.....	.....do....	Yes.....	Yes.....	No....	Yes.

[a] All are compelled to belong to relief.
[b] Promotion depended on membership; now all are members.
[c] Promotion depends upon membership.
[d] As all belong, required to join before employed.

The total number of lodges making replies to the questions was 28. The came from 26 cities and towns in 7 different States and represent 1,67 members.

In answer to question 1, 100 per cent say that membership in the relief d partment is considered by the employees to be compulsory.

In answer to question 2, 100 per cent say that men who seek employment c not receive it if they do not make application for membership in the reli department.

In answer to question 3, 100 per cent say the blank application for membe ship in the relief department is handed to the new employee without solicit tion on his part.

In answer to question 4, 100 per cent say that the actions of the company representatives are such as to make him believe that the filling out of th blank by him is necessary to secure employment.

In answer to question 5, 69 per cent say that the employees who are alread in the service and not members of the relief department are coerced or intim dated into joining it. This low percentage may be accounted for by the fa tl at 24 per cent of the answers to this question say that all belong to the reli department; consequently there is no reason to coerce them.

The answers to question 6 are similar to the answers given by the Pennsy vania employees to the same question, and, as I have before said, show t many ways the company goes about it to force the employees into the associ tion.

In answer to question 7, 100 per cent say that the amount paid into the reli fund by the employees is not a voluntary contribution, but they are required l the company to pay it.

In answer to question 8, 92 per cent say that they think membership in t relief department has a tendency to keep members out of labor organizatio on account of their being unable to pay the dues in both.

In answer to question 9, 33 per cent say that members of the relief depa ment are granted special privileges over those who are not members. This lo percentage may also be accounted for by the fact that 40 per cent of the answe to this question say that all belong to the relief department.

In answer to question 10, 100 per cent say that they do not consider it fa that upon receiving benefits from the relief department they should be requir to release the company from responsibility for injury.

In answer to question 11, 100 per cent say that they agree with the opini that the prime objects of railroad companies in operating relief departments a to deprive the employees of the right to recover for injury and alienate th interests from our brotherhoods.

In addition to the answers to these questions received from the lodges I ha received numerous letters and papers, sent unsolicited by members of the relief departments, which are very unfavorable to the departments. The f lowing are some of them. In order to fully protect the men who wrote the letters I withhold their names, but I have the original letters here with me a would like to have the commission look them over:

"H. R. FULLER,
"Washington, D. C.:

"The relief department has made amendments to the by-laws without co sulting the ones who pay to keep it up, and make laws in which we have no s whatever, and in the last lot of amendments adopted by them all of our me bers kicked against those changes, but they were made all the same and th were given to us after they were adopted by the officials. We had no vote the matter and have no say whatever what shall be the laws which govern and what shall be done with the money we pay in, and we don't know wh becomes of it, only what they choose to put on paper and give us, and no inf mation will be given us, as we have tried to find out such things the same we do in our own lodge room.

"Yours, fraternally."

"Mr. H. R. FULLER,
"Washington, D. C.

"DEAR SIR: Your letter of a few days ago was recieved and contents not The inclosed sheet was filled out and inclosed you for your consideration, e and hope that the matter will be taken up at the earliest possible moment see what can be done.

"Of course you will understand you will have to treat our names as confidential, otherwise there will be consequences.

"Fraternally, yours."

"Mr. H. R. FULLER,

"*Legislative Representative, Washington, D. C.*

"DEAR SIR AND BROTHER: Yours of the 17th received and noted. Think you will find blank O. K. now. The Pennsylvania Railroad relief is in a way not compulsory; men are employed without joining relief, but are almost forced to join afterwards. They are made to believe that if they are not members of relief they may expect to get released at any time.

"Fraternally, yours."

"H. R. FULLER, Esq.

"DEAR SIR AND BROTHER: I think I can give you some information that will be of use to you, but if you make use of the same I would ask that my name be not mentioned. The Baltimore and Ohio relief has a clause in their regulations which says that after a member becomes 65 years old and is unable to work that he will be pensioned. My father has been in the employ of the Baltimore and Ohio for forty-nine years and has a record of never having been suspended. He is now 71 years old and unable to work. He applied for a pension but as yet has not received it, and the excuse for not giving him the same is that there is not enough money in the pension feature to put any more on it, yet the relief has posters all around stating that they have money to lend employees on houses, etc. My father has been a member ever since it started. If this was some boss he would have got it without much trouble. For what I pay in the relief I can get about three times the benefits in other organizations.

"Yours, in B., S., and I.

"P. S.—Please destroy this communication."

[Camden Lodge, No. 257, Brotherhood of Railroad Trainmen, meets second and fourth Sundays at 1 p. m.]

"CAMDEN, N. J., *April 6, 1900.*

"H. R. FULLER.

"DEAR SIR AND BROTHER: Inclosed you will find copies of letters in regard to the voluntary relief fund of the Pennsylvania Railroad system. I have the original letters in my possession, but have promised not to divulge the names of supervisor or foreman. I think it would be well to have the copies typewritten, as my handwriting is well known here, for I suppose you will use them in your work. Hoping for the full success of your enterprise,

"I remain, fraternally, yours."

The following are the copies of the letters that were inclosed with the above letters:

"PENNSYLVANIA RAILROAD,
"WEST JERSEY AND SEASHORE DIVISION,
"*Woodbury, January 30, 1900.*

"S—— ——.

"DEAR SIR: I think by this time you have been able to judge if ——— will suit you in the gang.

"Please get him to join the relief fund at once. If he will not, get another man that will.

"Yours, truly, "——— ———, *Supervisor.*"

"PENNSYLVANIA RAILROAD,
"WEST JERSEY AND SEASHORE DIVISION,
"*Woodbury, N. J., March 20, 1900.*

"*To all Foremen, Salem Branch and Bridgeton Branch:*

"You will arrange to increase your force April 1, one (1) more laborer, making a total of three (3) laborers, at 12 cents per hour. Condition of employment of this man is that he join the relief fund; also give their full names.

"Yours, truly,

"——— ———, *Supervisor.*"

Now, I ask you, Mr. Chairman, to compare the answers contained in these tables, also these few letters, to the statement of President Cowen that the relief department is approved by 99 per cent of the men. Is it reasonable to think

that these employees aprove an association which they are compelled or forced to join to hold their positions—an association which takes from them their legal rights because they drew benefits from a fund that they themselves have created over 80 per cent of? I would answer no. The manhood and independence of these men rebel against such unjust conditions, and they are opposed to these associations rather than in favor of them. If Mr. Cowen had said that 99 per cent of the men were opposed to these associations, I think his statement would have come nearer being correct.

A very small per cent of the roads operate relief associations; but they are slowly growing, and the large lines which now operate them are leasing and buying in new branches. The relief departments are introduced on the newly acquired lines, and in this way are being extended year by year. Speaking theoretically, I believe, from a competitive standpoint, that the roads which operate relief departments have an advantage over those which do not, inasmuch as they reduce damage suits, which must mean thousands of dollars to the companies each year. This was practically admitted by Mr. Cowen when he said that these associations had almost entirely done away with damage suits. To put all roads on the same level in this regard means that we must do one of two things—allow these departments to be extended to all roads, which would be to extend an evil which the employees would bitterly resist, or prohibit their further operation by the roads now having them.

Section 10 of the act of Congress approved June 1, 1898, forbids the making of membership in these associations a condition of employment. It also forbids the employer from requiring the employee to enter into these contracts releasing the employer from responsibility for injury; but this law is being openly violated and defied. In order to show to the Commission how boldly these railroad companies do this, I will quote that part of the law applying to such cases and then quote some of the words used by these companies in defiance of it. The law reads:

"That any employer subject to the provisions of this act, and any officer, agent, or receiver of such employer * * * who shall require any employee or any person seeking employment, as a condition of such employment to enter into a contract whereby such employee or applicant for employment shall agree to contribute to any fund for charitable, social, or beneficial purposes, to release such employer from legal liability for any personal injury by reason of any benefit received from such fund beyond the proportion of the benefit arising from the employer's contribution to such fund, * * * is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof, in any court of the United States of competent jurisdiction in the district in which such offence was committed, shall be punished for each offence by a fine of not less than one hundred dollars and not more than one thousand dollars."

Letter of President Huntington, of the Southern Pacific Railway, to the employees of that road on February 15, 1900:

"* * * Applicants for employment after March 1, 1900, must become members of the relief departments before entering the company's service."

President Cowen, of the Baltimore and Ohio Railroad, when testifying before this Commission, after having had this law read to him, said:

"If it is sought by that act to change the agreement that is made between the railroad company and its employees, I should say that the act is invalid—that a party has a perfect right to make that agreement on his part, and the railroad company has the right to make that agreement. I should take that position unhesitatingly, even if I thought that act covered our department. It is an enormous advantage to the employee."

He was then asked this question:

"As a lawyer, would you not take the position that the law should be complied with until declared unconstitutional?"

To this he answered:

"No; I would not. On the contrary, the only way you are going to get a decision as to its constitutionality is not to comply with it."

This convinces me that the law on this question is inadequate, and that as long as these relief associations are allowed to exist, just so long will these companies take unfair advantages of the employees; and I think the only effective remedy is to legislate these associations out of existence by prohibiting railroad companies from operating them. I would, however, require the railroad companies to still carry the insurance of those employees that they have forced into the associations and have become so crippled or grown so old that no other insurance company will insure them.

Country .....

Date of enactment .....
When in force.....

SCOPE AS TO KINDS

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STATEMENT OF MR. HUGH L. BOND, JR., OF BALTIMORE, MD., SECOND VICE-PRESIDENT OF THE BALTIMORE AND OHIO RAILROAD COMPANY.

Mr. BOND. Mr. Chairman and gentlemen, my purpose is particularly to try to give this committee the facts in relation to these relief departments that you have heard mentioned. I can not say that you have heard the facts, and I shall not go into any general discussion of the law of fellow-servants or any general comments or arguments as to the propriety of a change in the present law. The present law, however, seems to me to be entirely misunderstood by the gentleman who has spoken in advocacy of this bill. He seems to think that the law is based on the theory that the employee can not foresee the dangers and avoid the dangers of his employment, and that it is only those dangers that he can so avoid that are included in the risk which he assumes in taking employment for the consideration paid. Now, that is not the law. The law proceeds from just the opposite view. The view of the law is that he in taking his employment and accepting his wage assumes the unavoidable and necessary risks of that employment, and that the master assumes and is bound to discharge toward that employee only the diligence and care of a prudent man, first, in the selection of the other employees, and, secondly, in the furnishing of the place where the employee must work and the surroundings of his work, including his machinery. Now, we do not have to go back to a discussion of the Roman law. The whole subject was completely summarized in the report of the Parliamentary commission, which report is set out at length in the report of the Massachusetts commission on this subject, and anyone who wishes to look into the history of the law will find it there.

What the law is and the reason of it has been fully stated and had to be fully stated to meet the case in the decision of the United States Supreme Court, through Mr. Justice Brewer, in the case of the Baltimore and Ohio Railroad Company *v.* Baugh, reported in 149 U. S., at page 368. Now, that is the law, and, as I say, I shall not go into any extended discussion as to whether the law ought to be changed in any particular. But I do say that the only motive for that change must be a socialistic motive, using that in a good sense—that is, the object of benefiting some particular class. There is not any reason why the employer should be charged with anything more than he can do, and the law as it is charges him with the use of reasonable care. As Mr. Justice Brewer points out, that is all he can do. To use the language of the court:

> No human inquiry, no possible precaution, is sufficient to absolutely determine in advance whether a party under certain exigencies will or will not do a negligent act; so it is not possible for a master, take whatsoever pains he may, to secure employees who will never be guilty of any negligence.

And so as to the appliances.

Mr. STERLING. May I ask you a question on that?

Mr. BOND. Yes, sir.

Mr. STERLING. What is the reason for any distinction between the coemployee and another employee working for the same company who does not happen to be a coservant? The company is liable if

he is not a coservant with the party injured. Why should there be any distinction?

Mr. BOND. There was not any distinction at common law, because they were all held to be coworkers in a common enterprise, and, prima facie, that is so to-day. But the courts in these enormous enterprises have divided the enterprise itself into departments, and they have held that the worker in one department is not in the same enterprise with the worker in another department. In other words, they have said that the common master was engaged in more than one enterprise.

Mr. STERLING. Yes; but now where the party injured is not a fellow-servant with the party causing the injury it holds the employers to a higher degree of care than it does where he is a fellow-servant.

Mr. BOND. Yes.

Mr. STERLING. For a passenger an employer is liable for the negligence of his servant, and why in that case should the employer be held to the highest degree of care, and then where there are two men working on the same engine or on the same train, should he not be liable?

Mr. BOND. Why, theoretically he is not, but practically he is. That was under the general law of agency, however, and as the English commission pointed out, this fellow-servant law is not an exception to the general law of agency, but it is an integral part of that law. I am afraid you are getting me into the discussion of technicalities, which I want to avoid.

Mr. BRANTLEY. All of the courts have not accepted that theory.

Mr. BOND. No, sir; I know they have not.

Mr. BRANTLEY. The supreme court of Georgia has rejected it utterly.

Mr. BOND. Yes, sir. And Mr. Justice Brewer points out that that is a distinction that has been made, and he points out—and that was the importance of the Baugh decision—that the real distinction that makes the master liable for the act of one servant, and says that he is not liable for the act of another, is that in the first case that servant is discharging a duty that rests on the master, and in the other case he is not discharging a duty that rests on the master. I do not want to get into that technical discussion, but what I wanted to point out is this, that if you are going to extend that law you might as well frankly admit that you are going to do it, not because there is anything unreasonable about it, because the common law is good, sound, hard sense, but because you think that these employees ought to be supported, ought to get a compensation which they do not get under that rule; that is to say, that you are going to give them something not on the ground of good, hard, common sense, but on some other ground.

That makes what you do simply a charge on enterprise. You are putting a burden on enterprise to that extent.

Now, I am not going to discuss whether it is wise or right or not, but I am just trying to define what you are doing; what the proposition is. Some things, though, are perfectly clear as necessary conditions of such an act. One of them is that nobody can reasonably ask that a man who enters an employment of this character should be absolutely insured at the public expense, because it gets down to the *public expense.*

This Bates bill absolutely insures the employee. Take the instance or example that was given by Mr. Fuller of the conductor and the passenger going from Washington to Philadelphia. Under the Bates bill, if that train met with a wreck due to a washout by cloudburst or unavoidable accident, the conductor could recover and the passenger could not. The Bates bill puts the employee in a better position than the passenger.

Mr. GILLETT. How could an employee recover?

Mr. BOND. Absolutely. There is an insufficiency in the track.

Mr. GILLETT. There is no negligence there.

Mr. BOND. It does not call it negligence. It does not say a word about negligence. If the committee will look at House bill 7055 you will see exactly how a bill will read that does introduce negligence into that liability. That is the Massachusetts law. And so as to an absolute insurance against negligence of a coworker. Mr. Alexander asked the question as to whether under the Bates bill if two men were shoveling dirt into a car and one of them hit the other on the head, the company would not be liable; and one of them would be liable under this act.

Mr. GILLETT. The Bates bill says—

for all damages which may result from the negligence or mismanagement of any of its officers, agents, or employees.

Mr. BOND (reading):

or by reason of any defect or insufficiency in its cars, engines, appliances, machinery, track, roadbed, ways, or works.

Now, if a passenger train goes in a hole, it is certainly due to insufficiency.

Mr. GILLETT. Is it due to their carelessness or negligence?

Mr. BOND. I say it makes no difference under the Bates bill whether it is due to carelessness or negligence or not. It is an absolute insurance.

Under the Gillett bill the company would be liable only if that hole in the track was due to negligence. That is the distinction.

Mr. GILLETT. We all understand that a company or anybody that employs men is liable for any defect that exists in the machinery and appliances that by the exercise of reasonable care and diligence they could have discovered; and I do not think those two last lines change the existing law a particle.

Mr. BOND. In the Bates bill?

Mr. GILLETT. In the Bates bill.

Mr. BOND. I wish I could agree with you, sir.

I just wanted to point out that the Bates bill provides absolute insurance against any of those defects, no matter whether there is any negligence or not, and also provides absolute insurance in the case of injury by any coemployee, no matter what his relations or who he is; and it seems to me that that is unreasonable.

In the second section of the bill, having got absolute insurance, they undertake to do away with the loss of that insurance which would arise from the application of the ordinary rules of law in regard to contributory negligence, and they want the public—because it falls on the public; you put it on the railroads and somebody else will pay it—they want the public to insure these men not only against all accidents, however arising, whether there is any

negligence or not, but also in case they are negligent themselves they want to be still entitled to that insurance on a question of the measure of their negligence against the general negligence. That strikes me as unreasonable and strikes me as against public policy. If there is anything that is necessary, not only to the railroad company but to the public, it is that the railroad employee should be on the qui vive, that he should not have the slightest inducement or seeming of an inducement to be negligent as to his own safety, because his own safety means the safety of other people.

The Massachusetts law, as you find it in the Gillett bill, which goes further than the Massachusetts law, by the way, is undoubtedly the best considered fellow-servant law that has ever been adopted in this country. It is a law that is certainly drawn with legal accuracy, if nothing else. But the point that I wish to cover in the time that has been allotted to me was to explain to you gentlemen what these relief departments are and the work that they are doing, because those facts are relevant to this inquiry; and not merely because of clause 3 of this bill, but because, as I say, the only motive which can actuate this committee or this Congress or anybody in extending or modifying the present law of fellow-servants is the motive of benefiting the class about whom you are legislating; and you have got to know the situation of that class and what interest they have now to act intelligently and not to do more harm than good to this large body of men.

There are six relief departments, or associations, in this country connected with railroads, the companies operating 31,000 miles of railroad, employing 310,000 men, or about 22½ per cent of the total railroad employees of the country, and of those 310,000 men 235,000, or about 75 per cent, are members of these associations. Now, you would suppose from what has been told you that those associations are organized simply for the purpose of paying death benefits or accident benefits to these men. I tell you that that part of the work of these associations is the smallest part, that the death benefit paid last year for accidents was less than one-fifth of the payments made by those departments, and that the payments made by those departments for death and for accident and disablement by accident together were less than one-half of the payments that those departments made. Now, those payments run up into figures. The total disbursements by those departments last year were $3,500,000. Of those disbursements $875,000 were made on account of death from sickness, $570,000 on account of death due to accident, $1,150,000 on account of disablement by sickness, and $950,000 on account of disablement by accident.

That does not show it all. The number of deaths by sickness were 1,476; the number of deaths by accident were 870; the number of cases of sickness were 85,000; the number of disablements by accident were 50,000.

I want you to understand this point, because it is the gist of the whole thing—that the danger, the hardship, the burden on the man that earns his livelihood by labor or by day wages is not accidental death. His danger is disablement by sickness, primarily, and then by a small accident that loses him his wages. Those are the things that cost the money to protect these men against, and that is the work

which is more important to the employees of this company than anything that you can do for them.

Mr. GILLETT. Have you any statement there as to what proportion was paid of those amounts by the railroad, and what——

Mr. BOND. I am coming to that presently. I want, in the first place, to tell you what they are doing.

Mr. ALEXANDER. Why did you link sickness and minor accident together in that way? Is there any relation between them?

Mr. BOND. I stated them separately.

Mr. ALEXANDER. Yes; but you seemed to have them linked in your mind.

Mr. BOND. Yes, sir; they are.

Mr. ALEXANDER. I wondered why.

Mr. BOND. Because these figures show that there were 50,000 cases of minor accidents. Now, those were not accidents that a man could sue the company on, I do not care what act you gave him. They were things that lost him time.

Mr. CLAYTON. Specify some of them, so that I can understand what you mean by a minor accident.

Mr. BOND. A man mashes his thumb.

Mr. GILLETT. Or sprains his wrist?

Mr. CLAYTON. Yes.

Mr. BOND. You must understand that the railroad business is one fight and struggle with the forces of nature day and night. Every force, beginning with the force of gravity, is against the movement of traffic. You have not only got the actual vis inertia, but you have mountains to climb, and everything that you can think of to interfere, and nothing helps. It is the man and the steam. Those are the only things to push them up, and everything is against them, and you can not help getting hurt. It is the nature of things that where you are overcoming such forces and moving such immense volume of weights, such immense weights, a man will get hurt; and he has simply to lay off. He can not work, but he can not afford to sue.

On the Baltimore and Ohio Railroad, in the Baltimore and Ohio department, there were 12,000 and odd of those disablements, and they paid for them, I think, $15 apiece—something like that.

Mr. DARR. It was about $15 apiece.

Mr. BOND. About $15 apiece. There were 20,000 cases of sickness, and they paid on them over $17 apiece.

Mr. CLAYTON. You mean for each minor accident you paid $15?

Mr. BOND. Yes, sir.

Mr. GILLETT. That was the average?

Mr. BOND. Yes, sir; they were the kind of things that, no matter what his rights might be, he could not sue for. If he did sue, the lawyer would get it all. So that it is proper, Mr. Alexander, to consider those two things together. The time lost by sickness and the time lost by the minor accidents are practically the same thing, so far as the consideration of this committee is concerned. Where he has a permanent accident, permanently disabling him from earning a livelihood, in all these associations he is pensioned for life or during the continuance of that disability.

As to the organization of these associations, the death liability, ordinary insurance liability, of these associations is $128,000,000.

That liability, as well as all the other liabilities, all the other payments, is absolutely and unconditionally guaranteed by the railroad companies. Against this liability they have in reserve funds less than 2 per cent. Their annual receipts from the men are about three and a half million dollars. Their annual distributions to the men are about three and a half million dollars. They have had to make up in actual deficit of those receipts to meet the payments of the year something over $700,000.

Mr. PALMER. A year, or only——

Mr. BOND. That is since they got to going.

Mr. GILLETT. How long have they been going—three years, you say?

Mr. BOND. They differ in time; I do not know what the average is. The Baltimore and Ohio has been going ever since 1880. They contribute in actual money to the expense of the association $425,000.

Mr. PALMER. That is your road alone?

Mr. BOND. No, sir; all the roads. That applies simply to the clerical hire and special expenses connected with the departments, which are paid by the companies. They give free the time of everybody connected with the company to do the business of this department. They give the office space, the rent, everything that goes to make up the running of the department.

Mr. TIRRELL. What is the assessment—so much a year or pro rata on his wages?

Mr. BOND. They are divided into classes, and each class entitles to what is known as a benefit. Seventy-five cents a month in the average of the departments entitles a man to one benefit.

Mr. PALMER. How much is that?

Mr. BOND. That one benefit entitles him to 50 cents a day in case of disablement. That, I think, is uniform throughout. It entitles him to $250 in case of death by any cause, and in some of the associations accidental death entitles him to twice as much as death from any other cause.

If you compare that with the death rates by ordinary accident insurance companies for the same class of risk, taking a brakeman or a switchman, you will find that the rate for the brakeman or the switchman for $500 in case of death and $5 a week in case of disablement costs $22.50 a year. In these departments to get $500 in case of death by accident and $7 a week in case of disablement a man pays $7.20 a year. In other words, by the assistance that the company gives in putting its whole force to running the department, in paying expenses, furnishing office rent, and in backing the whole scheme with its guaranty and credit, it saves the necessity of accumulating any fund, makes it the cheapest insurance that ever was heard of, and makes it, as that case shows, about one-third of what an ordinary accident insurance company could do the same work for.

Mr. PALMER. Can a man get more than one benefit by paying more money?

Mr. BOND. Yes, sir. The amount which a man can take in death benefits varies in the different departments from $1,250 to $6,000. The rates which he can get for disability vary from 50 cents a day to $2.50 a day.

The records show that so far from these men who are supposed to be forced to go into these departments taking only what they have to

ake, as you would suppose, if that was the case; the fact is, that they ake more than twice what they have to take. That they do in fact hemselves appreciate this insurance. And while a gentleman who ıas spoken before has assumed to speak for the employees of the 3altimore and Ohio Railroad Company on the strength of letters, vhich he did not read, I happen to have been in the service of the 3altimore and Ohio Railroad Company for over twenty-two years, luring which time it has been necessary for me to ascertain how our nen felt toward this department. In 1889 we had a reorganization)f the department, because the attacks of the assessment insurance :ompanies in Maryland induced the Maryland legislature to repeal ın act for a separate organization that we then had. We reorganzed the association as a department of the service of the company, ınd 90 per cent of the old men came in. We have had pressure)rought to bear upon us from the employees on our subsidiary line, :he Baltimore and Ohio Southwestern, to extend the benefits of this service to them. They regard it as a hardship that the main-line nen should have it and they should not. I know from my own personal observation and knowledge that before this department was instituted if a man was taken sick in the railroad service his credit at the store stopped and his family depended upon the charity of his fellows for support until he got well. I know that since this department was instituted he may be laid off for any disablement and his credit at the store is as good as if he were working.

Mr. GILLETT. I would like to ask you a question. How many have you in your employ that take more than one benefit; about what per cent of them? I would suppose if it was forced upon them, they would only take the one benefit.

Mr. BOND. The general statistics show that they take twice as many as they would have to take.

Mr. GILLETT. What percentage of those in the employ do that o-day, a small or large percentage, or all of them?

Mr. BOND. I have not got the figures to show that. I know I take ll I can get.

Mr. PEARRE. As I understand, the whole employment takes twice s much as they are required to take by the association; that is, the vhole list of employees takes twice as much?

Mr. BOND. That applies to all the departments.

Mr. PEARRE. The statistics which I am using, because of the impossibility of going into details and confusing the committee with ach separate department, are combined statistics of all these six epartments. We do not want to undertake to offer separate statistics for the different departments.

I say this, and I say it with a great deal of feeling, because this ıing has been under my observation, and in some sense in my harge, since 1882. I say that you can not do a worse thing for the 35,000 men who are members of these departments than to put anything into an act of Congress that is going to destroy or affect those epartments.

Mr. GILLETT. May I ask you this question? Do you make it a ule that when a man takes this insurance you speak of he must ign a contract to release that company from any damages that night result from the negligence of the company?

Mr. BOND. We do.

Mr. GILLETT. And do I understand you to say that if this bill is passed, that because this contract will not stand as a bar to an action for damages you must withdraw from your employees this insurance they now have and enjoy?

Mr. BOND. I say this: We give these men the option of taking their benefits or suing. They can not do both. That does not protect us against suit in case of liability. It simply protects us against speculative suits and annoyance and expense of litigation.

Mr. TIRRELL. Do you employ them just as quickly if they do not sign this agreement?

Mr. BOND. If they do not go into the relief department?

Mr. TIRRELL. Yes.

Mr. BOND. No, sir. It is an absolute condition of the service of the Baltimore and Ohio Railroad that they shall. We do not employ men otherwise, except in clerical positions.

Mr. GILLETT. You are not in favor, then, of that provision that if a man who has been injured so chooses, he may bring an action by returning to you all the benefits which he has paid in? You are not in favor of putting a provision of that kind in the bill, are you?

Mr. BOND. No.

Mr. GILLETT. You want to let that contract stand as a complete defense.

Mr. BOND. I want it just left alone. I want him simply left alone. He makes his election.

Mr. GILLETT. What do you think about a contract, so far as public policy is concerned, which requires the man to waive his right to sue for damages when he has been seriously injured by the negligence of the employer?

Mr. BOND. I do not think he ought to waive it. I do not want him to waive it, and these contracts have been upheld by half a dozen States—every State that has passed upon them. He is just required to elect.

Mr. BRANTLEY. After he has been injured?

Mr. BOND. After he has been injured, as to whether he will take his benefits or whether he will sue.

Mr. GILLETT. You do not want him to have both?

Mr. BOND. No, sir. I will tell you why—not as an officer of a railroad company. The officers of the railroad company would like to see the men get all they can get. We do not want a man to be hurt and cast adrift. We want to take care of him. But what excuse have the officers of the railroad company got with their stockholders if the thing does not give the stockholders any protection at all?

Mr. GILLETT. I thought you said that the public would have to stand it.

Mr. BOND. Why, the public does not have to stand this liability for insurance.

Mr. GILLETT. No; I mean for damages; that if we passed this bill on the fellow-servant question, making the company liable for the negligence of a fellow-servant, the public would have to stand it; that the company would not lose anything. What did you mean by that?

Mr. BOND. I think it eventually gets to the public.

Mr. GILLETT. That the rates would be raised, then?

Mr. BOND. I was speaking generally of all the railroad companies. I think every charge of that kind gets back to the public. I think

if you put a fellow-servant law on the builders of Washington City, on the buildings that are built here, the cost of insurance against the liability under that law will be just put into the estimates of the cost of the buildings, and that the rents of the buildings will be fixed on the basis of that cost, and that you gentlemen coming here to Washington who rent rooms in those buildings would pay that insurance.

Mr. STERLING. I guess that has already happened, has it not?

Mr. GILLETT. No doubt about that.

Mr. BOND. That is the way things distribute themselves.

Mr. PEARRE. As a mattter of fact, do any of the members of this department sue the Baltimore and Ohio Railroad Company when they are injured, as a matter of fact?

Mr. BOND. Certainly they do.

Mr. PEARRE. What is done then? What is the practice then with regard to the benefit under the insurance?

Mr. BOND. The practice is that they do not get it.

Mr. PEARRE. They do not get the benefit under the insurance, but take such damages as they recover in an action against the company?

Mr. STERLING. With the chance of a judgment.

Mr. CLAYTON. And still this fund is raised by a small tax taken out of the wages of the employees from time to time?

Mr. BOND. In part.

Mr. CLAYTON. Yes.

Mr. BOND. It could not be raised, however, for a minute if it was not for the guaranty of the railroad company behind it. No insurance department in the world would let a concern of this kind run along with a 2 per cent fund to meet these liabilities. It could not run for a month.

Mr. HENRY. As I understand, you require these employees to contribute to that fund—they do contribute to it—and so much is paid out every year out of the fund to these employees. Is that amount charged to the operating expense of the railroad or not?

Mr. BOND. No; it is not, unless the railroad has to make up a deficit, and then it is.

Mr. HENRY. Then the deficit is charged to the operating expenses?

Mr. BOND. Yes, sir; it is a——

Mr. SMITH. I would like to understand upon what theory, when one of these employees is injured, you compel him to elect whether he will sue the company for injury caused by its negligence or elect to take out of this indemnity fund that he has contributed to? Now, you are using a fund that he and other employees have constructed for themselves, an insurance fund, and you compel him either to release his own right in that fund that he has contributed to or to accept that and waive his right to sue for the injury caused by the negligence of the company.

Mr. BOND. He has contributed in part to that fund. The fund was not constructed by him, and it would not be a feasible thing for a minute, if it was not for the company bearing the expenses.

Mr. BRANTLEY. Let me ask you this question: As I understand it, Mr. Bond, the employees contribute to this fund for a twofold purpose. One is protection to him against disease and sickness and the other is for protection against the liability of accident. He is not

required, as I understand it, to waive anything, so far as the protection against disease is concerned, but so far as the protection against accident is concerned, he is required to agree, in advance, that if he is injured he shall not have both this benefit and an action for damages against the road; that he can elect as to whichever one he intends to pursue.

Mr. SMITH. In other words, if he pursues the company in an action for damages for negligence, then they require him to forfeit all his right in a fund that he has contributed to?

Mr. ALEXANDER. That is a part of the contract, and can be upheld in a higher court?

Mr. BOND. Of course.

Mr. ALEXANDER. When you engage them to work they elect to go into this insurance business or stay out of it, and if afterwards they get hurt they have no right to sue, then?

Mr. GILLETT. I understand so, afterwards, if they elect to sue.

Mr. ALEXANDER. That is, afterwards they can not, after getting this benefit for three or four or five years?

Mr. BOND. Yes, sir; they have an election after the accident. There is no requirement of any election before the accident. They go ahead. Any man goes ahead until he is injured, and if he is injured very badly he goes and consults a lawyer and finds out whether he has got a claim.

Mr. GILLETT. Whether he can get more out of the company or out of the fund?

Mr. BOND. More out of the suit or out of the relief fund.

Mr. ALEXANDER. If that is so, what is the advantage of a contract?

Mr. BOND. It simply protects us against speculative suits, not against any suit that has anything in it. He has plenty of lawyers to advise him whether he has got a good case or not.

The Gillett bill reads:

SEC. 9. That an employer shall not exempt himself from liability under the provisions of this act by contract or agreement with his employees, nor by any rules and regulations, and all such attempts to avoid liability are hereby declared null and void.

We would not have any objection to that. We do not want them to contract in advance against making any claim. But after they are injured then they must elect whether they will take these benefits or whether they will sue the company. That is the situation. And I say that is the only thing that I think the stockholders of the company get out of the whole thing at all. They are put under a great, enormous liability, and that is the only thing they get; that is, the little peace we get. Now, the reason that works is this. The figures speak for themselves. In all these associations, with 235,000 men, there are 85,000 cases of sickness. The instance of a good case against the company where the fellow, after paying his lawyer, who takes most of it, will get as much as he would get from the relief department, is an exceptional case, and the men know it is an exceptional case, and they would a great deal rather have a certainty, without having to accept the liability and without having to go to a lawyer, than they would to have the possibility of a damage suit. That is the reason the thing works.

Mr. PALMER. Is it not true that when a man pays 75 cents a month to the benefit fund, and then he gets hurt and receives his benefit, and goes on the same way for a series of years, he may receive more money than he pays in, and when he has a serious accident befall him he can take the option as to whether he takes his benefit or sues for more money? The case might occur where he would make money, having paid in his insurance and having drawn out more money than he paid into it. That case might occur?

Mr. BOND. Yes, sir.

Mr. PALMER. Is it not like any other kind of insurance?

Mr. BOND. The rates are so low that there is no chance for accumulation.

Mr. PALMER. At the end of the year the insurance company has earned his premium whether he is hurt or sick or not?

Mr. BOND. Yes, sir.

Mr. PALMER. And your claim, as I understand it, is that this is a very cheap kind of insurance?

Mr. BOND. It is. There is no reserve fund put in the premium rate. The whole reserve fund is the guaranty of the railroad company. There are no commissions to agents, no expenses for reserve, to put in the premium rate.

Mr. PEARRE. No graft?

Mr. BOND. No chance for graft.

Mr. GILLETT. In this bill presented by Mr. Fuller there is a provision—

That upon the trial of such action against any such common carrier by railroad the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, etc.

Now, if you had had to pay him a thousand dollars by way of insurance and he obtained a judgment for $2,000, you would have a right to set off that $1,000 that you had paid him, therefore you would not lose that at all?

Mr. BOND. No, sir; you are mistaken. All you can set off is what you have contributed. Now, how in the world could you undertake the operation of a concern with 52,000 members and figure out what you or anybody had contributed? The chances are that you could prove that the man had not contributed anything in a number of cases, because he would probably have drawn in benefits and sick benefits more than he had put in. That is an impossible calculation.

Mr. GILLETT. Would you have any objection to put in "all the money that he has received?"

Mr. BOND. That would be the same thing.

Mr. GILLETT. No. If he had received a thousand dollars you would receive that as an offset.

Mr. BOND. But it is not a question of benefit. The benefit does not arise from what we have saved. The benefit lies in being protected against the speculative suits which the bar of this country, I am sorry to say, is always trying to persuade every man to bring against every other man.

Mr. PALMER. You had better look out, most of this committee are lawyers.

Mr. BOND. I know that. I claim to be one myself. They do not wait even to hear from a man. The suit is brought when they read

a notice of the accident in the newspaper; they bring a suit—don't go near the man or a relative or anything else.

Mr. HENRY. Suppose the employee is killed in the accident? Of course he can not elect after he is dead. Then does his contract bind his representatives?

Mr. BOND. No; they have the same rights.

Mr. HENRY. Why? Is it in the contract?

Mr. BOND. Yes, sir. The only contract is that before these benefits are payable they must release the company.

Mr. GILLETT. That is, release them against this insurance?

Mr. BOND. No, sir; before the insurance is paid they must release the company.

Mr. HENRY. Or sue for damages?

Mr. BOND. They can go ahead and sue for damages.

Mr. HENRY. Has this occurred in many cases?

Mr. BOND. Many cases?

Mr. HENRY. Many, or any?

Mr. BOND. Where they have sued?

Mr. HENRY. Where they have stood by the company and elected to take the benefits, and the road has paid them in case of death?

Mr. BOND. Oh, my; yes, sir. It is an exception where they sue.

Mr. PALMER. Suppose a man is discharged, he does not get anything?

Mr. BOND. Yes, sir; he keeps up his ordinary death benefit.

Mr. PALMER. If he is discharged can he keep up his payments and get his benefit?

Mr. BOND. He can only keep his life insurance. We can not keep track of him, you know. He is going away, off the line, and it is impossible to keep track of him as to sickness and that sort of things. You could not extend that medical examination and service over the whole United States; but he is entitled to keep his life insurance.

Now, that is about the only point that I wanted to cover before this committee, and Mr. Harris is here and desires to address the committee, so that is all I care to say.

Mr. TIRRELL. You made the statement a short time since that the employers' liability act of Massachusetts was the best one that so far had been framed. I would like to ask you if you would have any objection, representing your company, to the enactment of the Gillett bill, which I understood you to say was framed on that law?

Mr. BOND. That is pretty hard——

Mr. TIRRELL. That bill is before us.

Mr. BOND. I told you very frankly I think that is the best bill and the best act that I know anywhere. Now, I am not in favor of extending the fellow-servant law, but, as a lawyer, I say that is the best law that I know of. There are some things in it that I would criticise. I do not think, if you will let me touch on that just a minute, that any public policy or any benevolent intention ought to carry beyond the employee and those dependent on him for support. I think when a man is injured he ought to have compensation, and if he is killed and he has a wife or children, or if he has a father or mother or even a minor brother or sister, dependent upon him for support, then those benefits ought to go to them; but I think it ought to stop there. I do not think you have any right to charge the public with a speculative sum in favor of that fellow's personal representative,

ch does not go to anybody unless it be his creditors, and generally
; to his lawyer. Now, that is the truth of the matter, between
yers. I do not think that is right. I do not think it is a square
[with the public. It is a good thing for the damage lawyer, but
'e is no sense in it and no reason for it, and that is my only criti-
ı of the Massachusetts law and the Gillett bill.
[r. TIRRELL. Have you ever heard of a case since that law was
:ted in Massachusetts where the legislature of Massachusetts has
ı petitioned to change it, or any complaint before the railroad
missioners of Massachusetts about its enforcement?
[r. BOND. I would not be a competent witness as to that. My
ırmation about that law is entirely secondhand.
[r. TIRRELL. Well, I live there, and I never did.
[r. BOND. I never have. I know that the railroads consider it a
:ty hard law, but they consider it a pretty reasonable, fair law.
/ith the permission of the Chair, I will surrender my further time
Ir. Harris.
[r. FULLER. I wanted to ask Mr. Bond two questions, if I may.
[r. BOND. Certainly.
[r. FULLER. I understood you to say that the departments which
represented permitted a man to hold his life insurance after he
left the service. Did you mean that with regard to all of these
ciations on every road, or just on the Baltimore and Ohio road?
[r. BOND. I had in mind the Baltimore and Ohio, of course. I
ıot know how many——
[r. FULLER. Could you say as to the other roads, whether he is
nitted to remain a member of the relief in any degree after he
es the service?
[r. BOND. I believe he is in some. I would have to find that out.
[r. FULLER. I wanted to ask Mr. Bond another question: Could
say what per cent of the money that goes to make up these relief
ls is contributed by the companies? What per cent of the ex-
se?
r. BOND. The figures that I have, taking everything into consid-
ion, show that the contributions are about half and half; not in
al money, now, but in the saving which the company makes in
operation through the contribution not only of money, but of
: of all its officers and employees—that is, allowing interest on de-
ts on monthly balances and the running of the association.
r. FULLER. Could you say as to the amount of cash that is turned
this fund, what per cent is taken in from the employees and what
ıid by the company—actual cash in the fund?
r. BOND. No; I could not.
r. FULLER. I wanted to ask you one more question: I under-
d you to say that the public would, in effect, absorb all this ex-
se of this liability—of this legislation; that the railroads would
have to stand it; that it would eventually come on the people
paid the freight?
r. BOND. I think that is right.
[r. FULLER. Now, that being true, we understand that you are
ply here speaking in behalf of the public, or your road?
[r. BOND. I am here to explain the facts, as I see them, to this
ımittee, and guide them as best I may in shaping legislation. I
not undertaking to argue with this committee whether it is good

public policy to extend this law or not. I am arguing that if it is it ought to be a good, tried, sensible law that we know something about, and that requirement is met best of all by the Massachusetts law. The officers of the company are not opposed to the men getting all the protection they can get, but we want it in a good, sensible, legal shape. If we are going to have anything it ought to be a good law, and not a loose law that means simply litigation for the benefit of nobody except the lawyers.

Mr. FULLER. I understand, then, you would like to have your employees get all they possibly can, but you do not think that this legislation is drawn along the right lines?

Mr. BOND. I think it is an extreme bill. I think it is too extreme.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY RELIEF DEPARTMENT.

Cases sustaining railway relief department contract chronologically arranged

[Submitted by Hugh A. Bond.]

Graft *v.* B. and O. 8 Atl. Rep., 206, Sup. Ct. Pa., February 14, 1887.
Fuller *v.* B. and O. Emp. R. A., 67 Md., 433 and 10 Atl. Rep., 237, Ct. Ap. Md., June 22, 1887.
Owens *v.* B. and O. 35 Fed. Rep., 715, U. S. Cir. Ct., S. D. Ohio, August 1, 1888.
Post *v.* B. and O. Emp. R. A., 122 Penna., Sup. Ct. Pa., October 29, 1888; 15 Atl., 885.
State use of, Black *v.* B. and O. 36 Fed. Rep., 655, U. S. Cir. Ct. Md., November 13, 1888.
Martin *v.* B. and O. 41 Fed. Rep., 125, U. S. Cir. Ct. W. Va., October 8, 1889.
Spitze *v.* B. and O. 75 Md., 162, and 23 Atl. Rep., 307, Ct. App. Md., January 14, 1892.
Maney *v.* C., B. and Q. 49 and 55 Ill. App. Ct., 105 and 588, June, 1893, and December, 1894.
Wymore *v.* C., B. and Q. 58 N. W., 1120, Sup. Ct. Neb., May, 1894.
Leas *v.* Penna. Co. 37 N. E. Rep., 423, App. Ct. Ind., May 8, 1894.
Johnson *v.* P. and R. R. R. 29 Atl. Rep., 854, Sup. Ct. Pa., July 12, 1894.
Ringle *v.* Penna R. R. 30 Atl. Rep., 492, Sup. Ct. Pa., November 5, 1894.
Donald *v.* C., B. and Q. 61 N. W. Rep., 971, Sup. Ct. Iowa, January 18, 1895.
Bell *v.* C., B. and Q. 62 N. W. Rep., 314, Sup. Ct. Neb., February 19, 1895.
Bryant *v.* B. and O. 9 Ohio C. C., 333, C. C. Ohio, March, 1895.
Brown *v.* B. and O. Wash. Law Rep., issue May 30, 1895, Ct. Ap. D. C., May 7, 1895.
Smith *v.* B. and O. 81 Md., 412, Ct. App. Md., June 18, 1895.
Vickers *v.* C., B. and Q. 71 Fed. Rep., 139, U. S. Cir. Ct. N. D. Ill., December 6, 1895.
Otis *v.* Penna. Co. 71 Fed. Rep., 136, U. S. Cir. Ct. Ind., January 3, 1896.
Shaver *v.* Penna. Co. 71 Fed. Rep., 931, U. S. Cir. Ct. N. D. Ohio, January 28, 1896.
Cox *v.* P., C., C. and St. L. Ry. 45 N. E. Rep., 641, Sup. Ct. Ohio, December 15, 1896.
Maine *v.* C., B. and Q. R. R. 70 N. W. Rep., 630, Sup. Ct. Iowa, April 8, 1897.
Curtis *v.* C., B. and Q. R. R. 71 N. W. Rep., 42, Sup. Ct. Neb., May 6, 1897.
Eckman *v.* C., B. and Q. R. R. 169 Ill., 312, Sup. Ct. Ill., November 8, 1897.
Johnson *v.* Charl. and Sav. R. R. 32 S. E. Rep., 2, Sup. Ct. So. Car., January 16, 1899.
Moore *v.* P., C., C. and St. L. 53 N. E. Rep., 290, Sup. Ct. Ind., March 30, 1899.
Hosea *v.* P., C., C. and St. L. 53 N. E. Rep., 419, Sup. Ct. Ind., April 7, 1899.
Beck *v.* Penna. R. R. 43 Atl. Rep., 908, Ct. of Err. and Ap. N. J., June 10, 1899.
Petty *v.* Brunsw. and W. Ry. 35 S. E. Rep., 82, Sup. Ct. Ga., January 30, 1900.

Clinton *v.* C., B. and Q. 84 N. W. Rep., 90, Sup. Ct. Neb., November 8, 1900.
Cowen et al. (B. and O.) *v.* Ray. 108 Fed. Rep., 320, U. S. Cir. Ct. App., pril 9, 1901.
Fivey *v.* P. R. R. 52 Atl. Rep., 472, Ct. of Err. and App. N. J., June 16, 1902.
Oyster *v.* C., B. and Q. 91 N. W. Rep., 699, Sup. Ct. Neb., September 18, 1902.
Hamilton *v.* St. L., K. and N. W. 118 Fed. Rep., 92, U. S. Cir. Ct. E. D. Mo., ctober 14, 1902.
State *v.* P., C., C. and St. L. Ry. 67 N. E. Rep., 93, Sup. Ct. Ohio, March 2, 903.
Haggerty *v.* St. L., K. and N. W. 74 S. W. Rep., 456, St. L. Ct. App., April 4, 1903.
Ray *v.* B. and O. 73 N. E. Rep., 942, App. Ct. Ind., 1st Div., March 30, 1905.
Walters *v.* C., B. and Q. 104 N. W. Rep., 1066, Neb. Sup. Ct., October 5, 1905.

ONLY ADVERSE CASES.

Miller *v.* C., B. and Q. 65 Fed. Rep., 305, U. S. Cir. Ct. Colo., December 29, 894; but see Miller *v.* C., B. and Q., 76 Fed. Rep., 439, U. S. Cir. Ct. App., ctober 19, 1896, where the opinion of Judge Hallett, in 65 Fed. Rep., 305, is ıferentially disapproved.
Montgomery *v.* P., C., C. and St. L., 49 N. E. Rep., 582, Sup. Ct. Ind., Febru- ry 19, 1898, which is squarely disapproved by same court in Moore *v.* P., C., C. nd St. L. Ry., cited above.

TATEMENT OF MR. ALBERT H. HARRIS, OF NEW YORK, GENERAL ATTORNEY FOR THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.

Mr. HARRIS. Mr. Chairman and gentlemen, I shall speak but briefly ıis morning, and with reference to those features of the bill which o not relate to the relief-fund measure, which Mr. Bond has devoted imself more particularly to.

The tendency nowadays, of course, is to regulation, and the regula- on of railroads. A great deal of public attention seems to be de- ɔted in that direction. The tendency is to decrease the revenues the railroads by legislation, and in a number of instances to crease the expenses of the railroads in operation, and also to pro- de for high standards of efficiency in operation. Now, to a certain tent and in certain of those directions it is undoubtedly important at the power of Congress should be exercised. I am not here to iticise or to quarrel with that tendency, but to acknowledge that does exist and must be reckoned with. But it seems to me that is tendency ought to be borne in mind—the general tendency—in amining the different phases of legislation that come before Con- ess in its different committees in order to see to it that any legis- tion that is put through follows some reasonable rule and is in cordance with a sound general policy—public policy—and will make r the general good of the railroads and the public and will not be sastrous to any existing interests.

In this particular matter I submit to you gentlemen that there ıould be no legislation at this time by Congress. In the first place is a serious question as to whether the power of Congress to regu- te commerce reaches the question of the liability of a corporation ıgaged in interstate commerce to its employees for accidents. The ɔwers, of course, which Congress has under that section are broad, ıd anything that affects the commerce itself is within the power the legislature to regulate. The equipment of cars which run from tate to State actually engaged in interstate commerce is a matter

which Congress has regulated. In the matter of rates, the matter of rates on interstate commerce is one which Congress is expecting to regulate now. Whether it has that power is, as you gentlemen know, a question which has been raised and has not been settled. It will be one of the interesting questions which the courts of the country will have to pass upon later on if that legislation goes through.

But an accident is a local thing, if I may so speak of it. A man who is injured in a railroad yard by a switching engine is not injured in the pursuit of interstate commerce, or in connection with interstate commerce, within the purview or within the reason that actuated the framers of the Constitution in confiding to Congress the power to regulate interstate commerce. Ever since railroads have been, the rights that grew out of accidents of that kind have been matters for the regulation of the States themselves. The right to recover in case of death, of course, as you gentlemen know, is a statutory right, and not a common-law right, and it has been enforced in all the different States because of the State statutes. The right to recover damages for personal injury has been regulated and governed by the law— either the statutes of the different States, or by the common law of those States as interpreted there by the State, or the Federal courts interpreting the law of the State itself. The Bates bill undertakes, wherever an interstate road is concerned, to make rules and regula— tions which shall govern the rights of a party concerning a suit instituted to recover; an interstate question to be ruled and governed by the act of Congress. I say, in the first place, emphasizing the point to which I called attention a moment ago, that it is more than doubtful whether an accident to an employee is a matter which can be reached by an act of Congress under the power to regulate interstate commerce, even while that employee is an employee of an interstate road.

As a matter of fact, however, you know that a great many of the railroads are both State and interstate. This statute applies to the road as a whole, if it is an interstate road, no matter whether the commerce in which the man is engaged when injured is State or interstate. For instance, the New York Central Railroad that I represent is both a State and an interstate road. It runs through some of its branch lines—leased lines—into other States than New York; but its main line is in New York State, and a great portion of its employees are engaged solely in intrastate business, but if it is to be an interstate road and is to come under the provisions of this act as an interstate road—a road engaged in interstate commerce, because we are engaged in interstate commerce—the provisions of this act will govern not only as to a man who goes backward and forward over the boundary line of Pennsylvania and New York, but will govern a man who goes from New York to Buffalo on the New York train.

Mr. GILLETT. Does this cover a man who works in a machine shop?

Mr. HARRIS. If he is an employee of the railroad, I think it might—t says, "every railroad" * * * "shall be liable to any of its employees"—that is, it shall be liable to respond in damages to any employee in certain cases. It does not say where the accident happens on the line. If one employee is injured in a machine shop by the negligence of another, I do not know why it should not apply.

But to follow a little further what I had in mind. The first question was whether Congress had this power. As to the inadvisability of this legislation, growing out of the fact that it was a matter that really belonged to the States, which the States had undertaken to legislate upon, and had legislated upon for a great many years; and, in the third place, for Congress to step in now and to undertake to pass a bill like this would introduce an element of confusion throughout the courts of the country that would be very hard to realize.

For instance, here is a man who is an employee of a State railroad. He goes into the State court and under the statutes and the laws of that State he has certain rights. In that same State there is another road that is an interstate road, and an employee of that road is injured in the same way and he goes into the State courts, and if the State courts are bound by this act, he has got a certain other set of rights. One man comes out with a verdict and the other does not. And it will not be until you get well along in the trial of the case that you can tell under which act you are proceeding, sometimes, because it may well be that this court shall hold that this only applies to the man actually engaged in interstate commerce at the time he is hurt, and that he is an employee of an interstate road, but engaged simply in a State movement, and he is not within the purview of this act; so that it will be only after the evidence is in that the court or the lawyers or the jury or whoever may be interested in the case can tell under which rule of liability or under which statute they are proceeding, and whether they can make it a State or an interstate cause.

Now, very crudely and roughly, these are some of the incongruities of the results that might follow the passage of this legislation. But really, gentlemen, the thing that has impressed me most about it is this: It is more or less a home-rule question. It is one that relates to the States where these men reside—the places where they are injured. Those States are dealing with these questions; have dealt with them and are dealing with them right along. The Federal courts in the different States, so far as the State laws on these questions are concerned, enforce the laws of the States. There has not, in the interesting talk given us by Mr. Fuller, been a suggestion that I am able to remember as to why it was that the States are not abundantly able to deal with this question, and why it should not be left to them.

Mr. BRANTLEY. Will you let me interrupt you there? He stated why.

Mr. HARRIS. Why?

Mr. BRANTLEY. He said the State of Pennsylvania would not do it.

Mr. HARRIS. Now, that was a reason. He could not get what he wanted in Harrisburg, so he came over here to Washington.

Mr. BRANTLEY. That was a reason.

Mr. HARRIS. Yes; that was a reason. And why could he not do it? I remember now, he threw out a little insinuation as to why he could not do it. But the answer to that insinuation is this: That you are asked to uproot a doctrine which has been established the country over, with a few exceptions in some States, not only by legislators, but by courts, by those whose incorruptibility was beyond question, and whose ability was beyond question, and who have stated this

matter and have laid down rules to guide corporations and employees, and who have made these statutes; and these decisions have been woven into the web and the woof of the law of the land. They are the consensus of the opinions of the ablest men for the last twenty-five years in this country, and the suggestion is now made that the basis upon which this whole structure of the liability of the employer and the employee rests should be upset. I have listened to Mr. Fuller to see what his reasons were for it, and with the exception of the reason that has been just suggested to me, I do not recall any other.

But it seems to me that it might be well for the committee to bear in mind this: These rules do not exist without a reason. The existing rules do not exist without a reason. There is some reason for them. Mr. Fuller spoke of the hardship that there would be in the fact that the passenger who buys his ticket to go from Philadelphia to New York on the Pennsylvania Railroad who was injured by a derailment of the train due to the negligence of a servant might recover when the conductor could not. There is nothing plainer in the world than why that should be. The hardship does not appear simply from a statement of the case. Mr. Fuller entirely confounds the rules and reasons that underlie all these matters. There is one set of rules that relates to the liability of the carrier to his passenger growing out of contract relations, based upon the undertakings that the carrier assumes with reference to the passenger, and there is another contract relation, and an entirely different contract relation, between the carrier, the employer, and the employee, a contract which sometimes is expressed, but oftener implied, from the very nature of the employment; a contract which has been understood—the nature of it has been understood—for years. And those different contracts, in the case of the passenger and in the case of the employee, lead to different liabilities and different results under the same state of facts, and properly so.

Mr. PALMER. The passenger pays money to ride, and the conductor gets money for riding.

Mr. HARRIS. That is it. He gets money for riding and gets money for taking care of the passenger, and the passenger pays for the conductor's services.

Mr. STERLING. Take the difference of two common employees of the same master. One of them is injured by the negligence of a fellow-servant. The other one is injured by an employee of the same company, but he does not happen to be a fellow-servant. In our State the trainmen on different trains are not fellow-servants. What is the reason for any distinction there which creates a liability in one case and not in the other?

Mr. HARRIS. Of course, as you know, the courts in the different States have split pretty widely on that question. But the reason that is given is that the freedom from liability for the act of a fellow-servant reaches only to those two cases where the two are in the same employment, both in the employment of the same master and in the same department, and working for the same end.

Mr. STERLING. And it goes further and says that they may exercise an influence over each other.

Mr. HARRIS. That has been given as an additional reason, but I do not attach any importance to that at all, because I do not think it

is a fact. I do not think that a switchman can exercise any control over an engineer who may be coming down with the locomotive. It is simply in the nature of the contract (because that is what you have got to get back to, the implied contract of the employment) that the man shall assume the responsibility for the negligence of others who are engaged in the same class of work with himself.

Now, following that line, perhaps on a little different angle. In this life we all have got to bear the ills that fortune sends to us ourselves, except in rare instances. It is the exception when we can shunt it off onto somebody else. If you are hurt, not only the pain and suffering is yours, but the financial loss is yours—unless what? Unless you can say that it is the fault of somebody else. And the liability of that person to respond to you in money is based upon fault, that in some way the injury you have received is the result of the fault of the man you ask to pay. This legislation puts the employee at both ends of the string. It provides that if through his fault another servant is injured the employer must pay for him. The liability is on the employer for his fault.

But, coming back, it works the same way. If he is hurt by the negligence of the other employee the employer must pay him. In either way the employer catches it. It does not make any difference whether the servant does the injury or receives the injury, the employer in both cases has got to settle.

Mr. PALMER. Why should he not, if the master is liable for the acts of his servants?

Mr. HARRIS. Yes; to third parties.

Mr. PALMER. If it is good as to all third parties, why should it not be from the fellow-servant?

Mr. HARRIS. For this reason: As to a stranger, a stranger can reach right back to the employer through the servant and say: "That man was doing your work."

Mr. PALMER. Yes.

Mr. HARRIS. "And was representing you."

Mr. PALMER. Yes.

Mr. HARRIS. "But I was in no relation of any kind with you, and you, being in a position to take the benefits of that man's work, must set and the expense and loss that may be due to his negligence."

Mr. PALMER. Why can not an employee do that very same thing? He is your employee and is in your service. You hurt him when he is doing your work, and you are getting the benefit from it.

Mr. HARRIS. So is the other man. They are both under contract to the master they undertake to hold in damages. That contract is for a service which requires the service not only of the particular man, but of the other servant. It has its basis in logic. If I hire somebody else to do some work for me, and in the course of his work he does an injury, there is a certain amount of logic in saying that I should be responsible for the injury. But take a case where two men are carrying the same rail, and through their joint negligence the rail drops and falls on both their feet. A claim might be made in that case—I do not know whether that would go, but I think Mr. Fuller would like to have it go—that both those men could recover.

Mr. PALMER. Where would be the negligence of the employee in that case?

Mr. HARRIS. From the negligence of the other employee. You must remember that an employee is not barred by his own negligence under this bill, if it is slight.

Mr. HENRY. If this bill were passed, would it not vastly enlarge the jurisdiction of the Federal courts?

Mr. HARRIS. It would depend a good deal on the interpretation by the courts of this bill.

Mr. HENRY. Would it not bring a lot of these Pennsylvania cases into the courts, which Mr. Fuller says he can not recover on because he can not have this sort of legislation enacted in Pennsylvania?

Mr. HARRIS. It would not enlarge the jurisdiction of the Federal courts, because that is not fixed by this statute.

Mr. HENRY. Would it not transfer a large mass of litigation from the State courts to the Federal courts?

Mr. HARRIS. No. What it might do is to overrule the doctrine of the State courts in the State courts themselves—that is, require the State courts to follow this law.

Mr. STERLING. Would it not have a tendency to transfer their suits to the Federal court? It involves the Federal statute.

Mr. HENRY. They could remove it just as well.

Mr. STERLING. This will be the law in the State courts of Pennsylvania if it becomes a law.

Mr. SMITH. I understand so. The transfer to the Federal courts is to annoy the plaintiffs more than anything else; to take them away from home and to make it difficult for them to get their witnesses.

Mr. PALMER. How could a Pennsylvania man bring an action against the Pennsylvania Railroad for an accident happening in Pennsylvania?

Mr. SMITH. The idea is that the injury was received in interstate commerce.

Mr. PALMER. That would not bring it within the jurisdiction——

Mr. HARRIS. Another thing I want to call your attention to is that you are asked to change the fundamental law with reference not only to common carriers, but one species of common carriers. There is no reason for that, and it is not right. It is true that the occupation of a railroad man is a hazardous one. So are many others, and there is no reason why carriers by railroad should be singled out and a rule of law be made applicable to them which is not applicable to the employers of labor of any other kind.

Mr. FOSTER. Has it not been held in some States that it is justifiable?

Mr. HARRIS. The legislature can say whether the situation is such as to require that particular class of legislation for that particular kind of activity; so that I say there is nothing to justify this committee in saying that a railroad should be put under this kind of obligation, and that this line of occupation should be put under this kind of legislation, and not a powder factory or any other line of hazardous occupation.

Mr. STERLING. Do you think a law of this kind would have a tendency to lessen expenses?

Mr. HARRIS. Not a bit. The railroads of this country now are run by honest, capable, sober men, as a rule. They do not need the spur of legislation of this kind to keep them up to the discharge of their duty. Not only the employees, but the operating officers themselves,

working under the pressure and the realization of the importance the work that they have to do, and they are taking every precaution t they can to safeguard the traveling public and to safeguard the erations of their roads.

Mr. ALEXANDER. Then why is it that the number of accidents in s country compared with the number in Europe gives a result so atly in favor of the conduct of the roads in Europe?

Mr. HARRIS. Because of the difference in conditions. And it will st, probably, always, even after the roadbeds and the protection our rights of way, etc., are on a par with those in England. Of rse this is a very large country, and some parts of it can not sup-t a first-class railroad—that is, you can not put a road like the nsylvania road through the deserts of Arizona and make it pay. u can not go to the expense that is necessary to have the highest gree of safety in those regions. But great advances are being made. st as fast as the condition of the business will warrant them in proving great advances are made in the improvement of those ditions.

Mr. PALMER. If the grade crossings in this country were eliminated, o not think we would have many more accidents in this country n anywhere else. There is not a grade crossing in all England.

Mr. ALEXANDER. You take your road from New York to Albany l that from Edinburgh up to London. It is about the same dis-ce in each case, I believe.

Mr. HARRIS. Yes, sir; about 440 miles.

Mr. ALEXANDER. How do the accidents on those two roads compare?

Mr. HARRIS. I do not know; but I know this, that the number persons carried over those lines, and especially the volume of ight—probably it is truer of the freight than of the passengers—volume is many times that going between Edinburgh and Lon-n, and the men employed on the line are undoubtedly very many re.

The CHAIRMAN. I wanted to ask you if you do not think that in this of Mr. Fuller's he wants to make respondeat superior the law in Federal court, and he wants you to wipe out the doctrine of con-butory negligence?

Mr. HARRIS. Yes, sir; that is just the sum of the whole thing.

The CHAIRMAN. Those are the two vital questions in the bill?

Mr. HARRIS. Yes, sir; those are the two vital questions in the bill, l there is no reason why this different rule should apply to the mon carrier by railroad than anybody else, and no good reason s been suggested by Mr. Fuller for the enactment of this legisla-n. In fact, most of his argument, as you remember, was in calling ir attention to hard cases, or to where he thought judges had made ong decisions. Of course hard cases do make hard law. There a tendency to cast upon each department of activity the losses that incident to it, and it is possible to justify legislation such as is ed for here upon that theory, but upon none that Mr. Fuller has ggested.

Mr. ALEXANDER. But is not this true in your State, New York, that ost every conceivable kind of a damage suit has been worked out the court of appeals?

Mr. HARRIS. Yes; it is.

Mr. ALEXANDER. Almost every case has been. You can not conceive of different conditions scarcely but what you will find them summed up in those court of appeals decisions.

Mr. HARRIS. That is true; but the trouble is not with the law, but with the facts, you know; and the lawyers keep going to the court of appeals thinking they can dodge in under one or the other state of facts that has been made. The law has been settled.

Mr. PALMER. What has been the effect of the compensation act of England?

Mr. HARRIS. These compensation acts are right along the line of what I was going to speak of, throwing upon each department of activity the losses incident to that department. Germany and Austria have followed that to some extent; and so has England, in those workingmen's liability acts. The old saying is partly true, that "The world owes everybody a living," and if a man goes into some department of activity, some line of work, and gives his services, and is injured, the loss has got to fall on somebody, either upon his relatives or upon the public at large or somebody else, and it has been said by the economic writers that the loss should fall upon the particular department of activity in which a man has devoted a life. So that we have in Germany these laws under which, when the man is injured, the Government pays half and the manufactory, the railroad, or whatever it is, pays the other half. It is divided between the Government and the employer.

In England the British workingmen's compensation acts provide a schedule of payments to be made in case of incapacity, and the contributions to that fund are made by the employers and by the employees. They are graded, and it is in the form of a statute, very much like what the Baltimore and Ohio and these other roads Mr. Bond has spoken of have done voluntarily. And it is working fairly satisfactory, we may say. There has been a good deal of grumbling on both sides, but lately I understand they have both settled down to the realization that it is a pretty good thing.

Mr. PALMER. It has not ruined England as a manufacturing country?

Mr. HARRIS. No, sir.

Mr. PALMER. And has not ruined the railroads yet?

Mr. HARRIS. No, sir. And if by Congress or the legislatures of the States—because in this country it must be by the legislatures of the States, I think—such legislation as that were to be passed and put into operation and go into that sort of paternalism from the farmer up to the sea captain that is an entirely different proposition. It is a very different proposition. It is surely a different proposition from singling out a carrier by railroad and saying that the proposition is so unique that all the rules of law relating to that carrier shall be upset and new rules imposing a very much higher obligation be put in force.

STATEMENT OF HON. WILLIAM W. DUDLEY, OF THE FIRM OF DUDLEY & MICHENER, REPRESENTING THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD.

Mr. DUDLEY. Mr. Chairman and gentlemen, on learning that the day was to be devoted to a hearing on this class of bills the general solicitor of the St. Paul Railroad telegraphed that it would be impossible for him to be here, and asked me to appear and state some reasons why this legislation ought not to be enacted. I have sat here and heard all that has been said up to this time. Of course, in common with all of you, I have had pleasure in listening to the best that can be said in favor of this legislation, I imagine. I think that the labor organizations who have sent Mr. Fuller here could not have made a better choice. He certainly has stated their case to the very best advantage to which it could be stated. This legislation, it seems to me, goes very deep, as Mr. Harris has said, to the very foundation of the whole doctrine of the law, and nothing more need be said, it seems to me, than what Mr. Harris has said. Nothing, certainly, could add very much to it.

But I want to say this, that certainly when Congress is called upon, as it has been by the promoters of these bills, to make such a radical change in the whole system of judicature of the country upon this question of negligence as is embodied in these measures, there ought to be some very good and controlling reasons given why this step should be taken. Such a step, it must be remembered, must be irrevocable. Once taken it could not be undone and retraced. In effect it is an impeachment of the trust which we have always had and which has grown up among the people of this country, the feeling of faith in the incorruptibility of the courts, and in the reliance that citizens of the United States may place in the courts that their rights will be protected and established in due form of law and with due regard to justice and fairness. Such a step should not be taken, it seems to me, nor should such an impeachment of the judicature of the country be engaged in, unless some very great and strong and controlling reasons should be brought before this committee to induce it to give its sanction to such bills.

If I remember it correctly—and Mr. Fuller may correct me if I am wrong—I think he said that from the reports of the Interstate Commerce Commission there were some 2,000—or 20,000?

Mr. FULLER. Killed?

Mr. DUDLEY. Yes; killed.

Mr. FULLER. I have forgotten the killed.

Mr. DUDLEY. Well, say 2,000?

Mr. FULLER. Two thousand; yes.

Mr. DUDLEY. And 50,000 injured. Now, if that be true, I draw from that an argument against such legislation rather than in favor of it. If that be true, why does not Mr. Fuller bring forward something here to convince this committee; why does not he adduce something here before this committee to show that there has been miscarriage of justice in regard to the remedy in these cases? If there has not been any miscarriage of justice in this great number of instances on the part of employees, it seems to me there is no good, sound, and controlling reason for such legislation; and it seems to

me that Mr. Fuller might, if he had used the great industry to this that he has given to the gathering of other statistics, have given us that. But he is silent; so that it is only a speculative argument here that is given to us for such legislation.

Gentlemen, I do not think that in the discharge of your duties, and in the conscientious regard to the duty which you owe the public to guard it against unwise legislation, unless good reason is given, you are going to pass such laws as this.

I thank you.

(At this point the committee adjourned until to-morrow, Thursday, March 1, 1906, at 10.30 o'clock a. m.)

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Thursday, March 1, 1906.

The committee met pursuant to adjournment, Hon. John J. Jenkins (chairman) in the chair.

STATEMENT OF MR. H. T. NEWCOMB, REPRESENTING THE DELAWARE AND HUDSON RAILROAD COMPANY.

Mr. NEWCOMB. Mr. Chairman and gentlemen, the British workingmen's compensation act has been alluded to here inadvertently, I suppose, in terms that might lead anyone hearing what was said, who was not familiar with that act, to suppose that it was very similar to House bill 239, now before this committee. In fact, it is as different from that measure as it is possible for the mind of man to conceive. It was a measure intended, and admirably devised, to substitute friendly arbitration for litigation, and in order to do that, to accomplish that result, it did several things, among them somewhat modifying the fellow-servant doctrine and the doctrine of contributory negligence, but leaving, at least to the latter, some scope. It also gave to the employers an equivalent for that modification by strictly limiting the amounts that can be paid for deaths and injuries.

Mr. PEARRE. You say it limited it?

Mr. NEWCOMB. Strictly limiting that. I will give you the figures in a moment. The committee appointed to investigate the relations between employers and employees in your State sent an agent abroad to investigate the operation of this act, and they reported as follows, to quote the language of their report:

> In general, they are intended to afford injured employees a more certain, even if more moderate, compensation for accidents than is sometimes obtained under an action in court. If we should compare the amounts received by employees under compensation acts with the amounts recovered by them in actions at law, after deducting all expenses, it is probable that we would find little difference between such amounts.

That is, if you consider the amount that is recovered in an action, after the lawyer has taken his percentage and the physician has taken his usually rather heavy fee, and consider all the employees and all *that they recover*, they get about as much for themselves under our *laws and our system* as they get under the English compensation act;

although over there the amounts are smaller and, perhaps, go to employees sometimes where, under our laws, they can not recover at all.

Now, beyond that, the British workingmen's compensation act is an act applicable to all kinds of labor, applicable to every employer who habitually employs, according to the terms of the act, one workingman, and it even applies to agricultural labor; but I submit to you gentlemen that it will be a long time before this committee will consider a measure proposing to establish conditions of that sort in relation to the agricultural labor of any part of this country. It will be a long time before it will be considered in any legislative body.

The amount that can be recovered under the British workmen's act in the case of death, and in case there are persons left who are wholly dependent upon the deceased, is the equivalent of the wages of the last three years preceding death, provided, however, that the amount shall not be less than £150 ($750) or more than £300 ($1,500). The extreme amount that can be paid in any case under that law is $1,500, and that can be paid only if there are persons wholly dependent upon the deceased. In case there are persons left who are partially dependent, the law evidently contemplates that the amount should be proportioned to their dependence, and if there are no dependents, the amount to be paid is stated in the act to be the reasonable expenses of medical attendance and burial, not to exceed £10 ($50).

For injuries, the amount which can be paid is 50 per cent of the weekly wage, and that is limited to the maximum sum of £1, or £5 per week. After that amount has been paid for six months the employer has the right to commute it for a cash payment, based upon the probable continuance of the disability.

Whether a law of that sort would be a good thing in the United States or not is not a question that is or can be before this committee. This committee and this Congress have no power to enact a statute of that sort with regard to the employers and employees of the United States. It might possibly enact such a statute if it chose with regard to a very small class of employees, and if we say with regard to railroad employees, employees engaged in interstate commerce, it is not clear that the employees engaged in interstate commerce amount to a considerable portion of all those employed by the interstate railways. That is a question that would have to go to the courts, and would have to be thrashed out very thoroughly, and we might ascertain that this bill if enacted could apply to only a very small number of employees.

But at best it would be selecting a special class of workmen, a special industry, and putting upon it a special burden. If this thing is to be done at all, it ought to be done in such a way that the burden of this legislation would fall equally and fairly upon every industry, and would proportion itself to the risks of injury which those industries carry with them. Now, the power of the State to enact legislation of that sort is certainly complete. No one has suggested in behalf of this measure that if Congress does not act this power does not stay wholly with the States with regard to accidents that happen within their borders; and if they choose in their legislation to adopt legislation like the British workmen's compensation act, or like House

bill 239, they can apply them completely to the industries within their legislative control. Any action of that sort on the part of Congress is limited.

Now, I take it, from the discussion which I heard yesterday, that the gentleman who spoke first in behalf of this measure would rather take all authority, so far as he legally may, away from the legislatures of the States in these matters and transfer it to the Congress of the United States. I venture to say that if he should accomplish that result he would regret it. It is necessarily so, that the burdens of legislation rest pretty heavily upon Congress. The limit of the physical capacity of Congress to deal with these matters has pretty nigh been reached, we have been told. We are hearing to-day in connection with the regulation of railway rates in this country that the details of the legislation of the country are beyond the physical powers of Congress, and because it has not the ability to deal with them it must erect a special body, a deputy legislative body, so to speak, in the Interstate Commerce Commission, to handle those details. And in this particular and in all this class of legislation, if Congress is to remove these things from the powers of the State, there will be a tendency to adopt similar devices. It is removing it further and further from the direct responsibilities of the people who are cognizant of the facts with which such legislation deals, and I should think that that is not a desirable thing for the workmen, for the employer, or anyone else. These matters ought to be left where I believe the Constitution intended that they should be left, to the States themselves.

It was stated here by the head of the American Federation of Labor, whom we all respect, that what the workmen want is not to collect damages, but safety. And I say on behalf of the company that I represent that what we want is not to keep anything from men who are injured, but what we want is the safety of our employees, of the people whom we transport, and of the property which we carry, and we believe that the maintenance of the law in somewhat its present condition is essential to that safety. We believe if the doctrine of contributory negligence is weakened, so that the employee does not have to look out for his own safety and is not required to exercise the utmost diligence in regard to his own safety, that the carelessness which may be permitted in that direction will affect the safety of others of his fellow-employees, of the traveling public, and of the property that is carried. We believe that this legislation would tend to increase the number of accidents rather than to diminish them We think that the fellow-servant doctrine is a great aid in maintaining that feeling, that esprit de corps, among employees, among those who constitute the brain and brawn and sinew and muscle that constitutes the greater part of the railway systems of this country; that if that is done away with, it will be another step in the weakening of that esprit de corps that goes to make good and efficient and satisfactory service for the public; that it ought not to be taken away; that it ought to remain there in behalf of the public. We think much has been done in preventing that loyalty on the part of the employees toward the company, the friendly relations between employer and employed, that are necessary to the best service and that ought to be perpetuated.

It was asked here yesterday why we have more accidents than they have abroad. I want briefly to attempt to answer that question. In

the first place, the balance of accident statistics between Europe and American is grossly exaggerated by certain people in this country in favor of European conditions. They seem to take delight in showing that everything is lovely and beautiful in Europe and everything is unsatisfactory in this country. Comparisons based on work done on train mileage show entirely different results from those that are commonly made. But it is true that accidents here are slightly more numerous, relative to the work done, than they are in Europe. Our railway system has been very rapidly created. Our country is new in many respects. The adjustments necessary to secure the utmost safety have not yet been permitted by the prosperity and resources of the country. The prosperity and resources of the country have not yet been great enough to permit us to create railways of precisely the sort that do away with accidents in the largest degree. The difference between the American railway and the English railway is perhaps roughly measured by the fact that our railways are capitalized at $52,000 per mile and theirs are capitalized at $275,000 a mile.

There is a difference beyond that. There is a difference in the character of the workman in this country and the European workman. The American workman has a proper and laudable feeling of independence, but sometimes that feeling of independence makes him less willing to adhere to the letter of the law, and it is the letter of the law in these large operations—I mean the letter of the regulations of the road—which means perfect safety. The European railway employee is accustomed to taking orders, is accustomed to discipline, and it is much easier to maintain that high degree of discipline on European railways than it is here. It has been suggested here that if this legislation is adopted and if it entails extra cost, that that cost will fall upon the public. That statement is true and it is untrue. No railway has a dollar to expend in wages, in the maintenance of its property, in damages, in taxes, or any fixed charges, that it does not receive from the public. It can not spend any money that it does not obtain in that precise way. It can not advance wages without receiving the extra cost of those wages from the public. But wages to-day are adjusted on the basis of the assumption by the employee of the risks that are covered by this measure. If that risk is to be transferred to the corporation and wages remain as they are, that is in effect an advance in the wages of the employee. And this is, then, in that phase of it, another of those legislative attempts—those attempts by law—to increase wages.

Those things, if they work at all, only work temporarily. Of course perfect justice would require that if this risk which the railway employee has been paid for is to be assumed by the company the wages should be diminished. In practice that is not likely to happen in any visible way; but ultimately we can be sure that wages will adjust themselves to any change of this sort. If risk is removed the payment that goes for risk will be removed through the gradual decline in wages if wages otherwise would have remained stationary or a slight retardation of wages if wages would have otherwise tended upward.

Mr. STERLING. Do you not think it would be easier to accomplish that by increased rates than to attempt to decrease wages; that the public would stand it better?

Mr. NEWCOMB. It would if it meant increased earnings; but increased rates usually mean decreased earnings.

Mr. STERLING. The natural law instead of the law enacted by Congress would control that?

Mr. NEWCOMB. The natural tendency of anything of that sort is to diffuse itself and to throw the burden upon those on whom it actually belongs. Increased rates mean diminished earnings and diminished profits, and for that reason it is impossible that anything of this sort shall be transformed into increases in rates. It is not at all unlikely that there shall be a retardation in the natural decline in rates. Rates are going down all the time to increase business, and it is very apt to retard the decline in rates, rather because of the psychological element that enters into any problem of that sort. If a man is being attacked he maintains his position just as strongly as he can.

What this means, then, if wages are ultimately to be adjusted to the new legal condition established in this way, is that the burden of bearing these laws will be borne by all workmen instead of by those who now perhaps it will be conceded ought to bear them, because in this very law it is suggested that they shall be relieved of the consequences of their own negligence.

This loss, the loss and the decrease of wages, would fall on all workmen, the most efficient and most careful and diligent and the negligent alike. It would therefore remove that premium on high care, on a high degree of attention to duty and extreme fidelity in the execution of those rules and regulations that are necessary—that premium on the utmost care that you and I want whenever we travel on the railway.

Mr. STERLING. I should think it would have the opposite effect. If the railroad company was responsible for the accidents caused by the negligence of the employee the employee would realize that his job would depend upon the degree of care that he exercised. If the railroad company was bound to pay for his negligence would he not then realize the fact that he must be more careful and that the railroad company would not retain him if he was not, and would it not inspire in him more diligence than under the present plan?

Mr. NEWCOMB. I am afraid that under conditions as we find them there is always a certain amount of carelessness that creeps in through long acquaintance with danger. There is a strong tendency in every dangerous employment for men not to exercise that degree of care which is essential to their own safety. In the mining industry it is very notable. It is very notable in the handling of freight trains and in railroad service of all kinds.

Mr. GILLETT. Would not the railroad, if it was to be held responsible for all accidents caused by fellow-servants, be more careful in the way it transacted its business in the handling of the freights and the block system, and bring in every appliance to protect itself against these suits, and in doing that would it not also protect the traveling public?

Mr. NEWCOMB. I think railroad corporations are doing everything that they can to prevent accidents, and adopting every precaution that they can; that they are expending money wherever they know that it will protect their passengers and their employees and property which they transport against accident. They can not exercise the

most complete control over their employees in these matters. They have to take into consideration and realize that there will be a certain degree of negligence, and that can only be handled, if it can be handled at all, by imposing on the employee most of the burden of what his negligence costs, and to transfer it to his fellow-employees and diffuse it among all employees, the careful and careless alike, would be unfair to the workmen, and a certain result of legislation of this sort.

The accidents on American railways are decreasing when an effort is made in anything except absolute figures. Relatively to the amount of work done there are fewer accidents of any class to-day than formerly. I have had time only since last night to make up the final figures in regard to persons killed. The reports of the Interstate Commerce Commission show that the number of persons killed per year since 1890 has decreased if compared with the number of employees, if compared with the number of passengers carried 1 mile, or if compared with the number of tons of freight carried 1 mile; and that, as compared with the total number of miles of track, there is also a slight decrease, although not so great as the others. Now, this happened during a time when it has been particularly difficult to guard against accidents. The extraordinary activity of railroads in the last few years has imposed extraordinary burdens upon the railway management. I will just give you these figures of comparison between 1897, the last year of the business depression, and 1904—the figures of the Interstate Commerce Commission—and you can get from them some idea of the excessive difficulty of preventing accidents. The number of railroad employees has increased from 823,000 to 1,300,000. The number of engineers has increased from 35,600 to 52,400. The number of firemen has increased from 36,700 to 55,000. The number of conductors has increased from 25,300 to 39,600. The number of other train men has increased from 63,600 to 106,700.

These tremendous increases in all ranks of employees obviously mean that it has been necessary in order to carry on the business of the country to put men in the place of engineers who have not served very long—not as long, perhaps, as desirable—as firemen; to make men conductors who have not served the apprenticeship to make them fit for that work. The enormous demand on the resources of the railroads in every direction has made it exceedingly difficult to adapt their methods, their organization, to these new conditions, and yet in the face of all those extraordinary difficulties we see a constantly decreasing ratio of accidents.

And I will allude to another difficulty that all of us have appreciated, and that is the difficulty of adjusting operations to these new safety appliances. It has been wise to adopt them; they are beneficial; but in the transition period they did cause a great deal of difficulty. And that is another difficulty against which the railroads have struggled, and struggled successfully against accidents. Things are going along toward more satisfactory conditions.

Mr. GILLETT. Right there is what I was thinking of. What has caused this decrease is because your employees are more skilled and careful and prudent than they were formerly or because of the action of the railway company itself in adopting certain methods—by

adopting the safety appliances and by the adoption of the bloc system? That has tended in that way to decrease the number c accidents. The men to-day are not more careful or a different cla: of men than they were a few years ago?

Mr. NEWCOMB. It is true, and I am very glad to say it, that w have better facilities; block signals are more common, and in ever way the railroad system is very much more perfect than it was; an yet I hope that the standard of our employees in every branch of tl work has improved. I should feel very sorry to think that it had nc

Mr. GILLETT. The railway is exerting every effort it possibly can decrease the number of accidents?

Mr. NEWCOMB. Progress has been made in all lines, and it is goir on still, and fifteen years more will show equal progress in the san directions, I am sure.

STATEMENT OF MR. J. N. REDFERN, SUPERINTENDENT OF TH RELIEF DEPARTMENT CHICAGO, BURLINGTON AND QUINC RAILWAY, CHICAGO, ILL.

Mr. REDFERN. I think I might add a great deal to the points whic were stated yesterday as to the practical work of the relief depar ment, but we do not care to take up the time of the committee, unle there are other things which Mr. Fuller would bring out to whic we would like the privilege of replying or submitting a brief, as tl committee might determine.

Mr. Fuller said yesterday that in the operation of the relief depar ment the money for the superannuation fund came out of the reli fund, which came out of the contributions of the employees. Tl statement is true in words, but it leaves a wrong impression i the minds of people. The Pennsylvania Railroad Company has pension department which is entirely separate and distinct from tl relief department. It adopted some years ago a pension plan whereb all these employees, when they reached the age of 70, would be r tired and paid a pension somewhat in proportion to the term of ser ice and the amount of wages received, or they could be retired at a 65 or between 65 and 70, if their physical condition required it.

All the money that is paid these employees—and it is now amoun ing to about $400,000 a year—is paid directly out of the treasury the railroad company, and, as I say, it has nothing whatever to c with the relief department; but in the regulations of the Pennsylv nia Railroad relief department there is a provision for what called a "superannuation fund," and it is for members of the reli department only, and when they reach the age which entitles them draw a pension out of the treasury of the company they are entitl to receive their proportion of the interest on the surplus fund in tl relief fund. In other words, a man who is a member of the reli fund gets the superannuation fund in addition to the pension paid b the company. I will say, however, that it is a very small figure i deed, and it was simply one way, in case the relief fund should ha a surplus, that the interest on that surplus might be used for the be efit of its members.

So when the statement is made that the superannuated men of tl Pennsylvania Railroad draw their superannuation out of the reli

fund it tends to give the wrong impression, because it is not the pension. It is not sufficient to support anybody, and it was never supposed it would be. The company pensioning its men probably averages a pension of, say, $300 a year a man; but that is all paid out of the company's money, while the superannuation comes out of the relief fund.

Mr. PEARRE. That is additional and supplemental?

Mr. REDFERN. Yes, sir; that is additional and supplemental.

Mr. PEARRE. May I ask you this question: Is your plan of the relief fund the same as that of the Baltimore and Ohio Railroad as described yesterday by Mr. Bond?

Mr. REDFERN. In general the plans of all these relief funds are the same. They differ in details. For instance, the question was asked of Mr. Bond yesterday whether all of the roads allowed the men to continue their membership, in respect to the death benefit, after leaving the service. They do not. But where roads do not allow the men to keep up their death benefit they have something else that is equally attractive to the men in the service.

Mr. PEARRE. You have a pension, you say?

Mr. REDFERN. No, sir; not on the Burlington. But the pension on these roads is an entirely different thing from the relief fund. The pensions are given and paid just as though the railroads had no relief departments.

Mr. GILLETT. Is it for old age?

Mr. REDFERN. Yes. Now, the Illinois Central and the Chicago and Northwestern road and the Pennsylvania, and many railroads throughout the country, are adopting this pension plan, and they are all outside of the question of railway relief departments. The men do not contribute any money whatever. The money paid in pensions is a pure gratuity on the part of the company.

The CHAIRMAN. Now, I believe, Mr. Fuller, that you close the argument if there is no other gentleman present who wants to be heard.

ARGUMENT OF ALDIS B. BROWNE.

I.—STATEMENT OF FELLOW-SERVANT RULE.

"Where a master uses due diligence in the selection of competent and trusty servants, and furnishes them with suitable means to perform the service in which he employs them, he is not answerable, where there is no countervailing statute, to one of them for an injury received by him in consequence of the carelessness of another, while both are engaged in the same service." (Am. & Eng. Ency. Law, vol. 12, p. 897, title "Fellow-servants.")

A note at page 898, ib., states:

"The rule is so well settled that a citation of authorities to support it seems superfluous. The following cases in which the rule has been affirmed are, however, given."

Then follows citation of many cases thus ruled in England, Canada, the Federal courts, and in the highest courts of some forty-one States and Territories.

The same article, pages 622–653, discusses at great length the superior-servant or vice-principal rule as established in the Federal courts under primary authorities of Chicago, etc., Railroad Company *v.* Ross (112 U. S., 377), and in a few of the States by statute or decision, and which pro tanto limit the general rule.

II.—CONTRIBUTORY NEGLIGENCE.

This is determined by the test of "ordinary care;" involves a matter of fact, and is hence for the jury (West Phila. Pass. R. Co., *v.* Gallagher, 108 Pa. St., 524), an upon the facts of each case.

Robinson *v.* Cone, 22 Vt., 213.

"There has been no want of ordinary care when, under all the circumstances and surroundings of the case, the person injured, or those whose negligence is imputable to him, did or omitted nothing which an ordinary careful and prudent person, similarly situated, would not have done or omitted; and, conversely, there has been a want of ordinary care when, under all the circumstances and surroundings of the case, something has been done or omitted that an ordinary careful and prudent person, so situated, would not have done or omitted to do." (Am. & Eng. Ency. Law, vol. 7, p. 378, title "Contributory Negligence.")

This rule is approved by all authority and is the applicable rule in measuring all liability. No sound reason exists why railroads engaged in interstate commerce should hence be denied the equal protection of the law in this regard. It is the rule as between passenger and railroad carrier; why not as between employee and such carrier?

III.—LIMITATION OF CONGRESSIONAL POWER.

The power to regulate commerce "between" the States is national; within the State it is local. The exclusive power in respect of the former is no stronger than the like exclusive power in respect of the latter.

A car or train engaged in transporting passengers or freight "between" the States is interstate commerce. A car or train engaged in like transportation within the State is not. Conceding the Federal power over the former must equally concede State power over the latter. Injuries of manifold kind and number covered by State law can not be tried or determined under a Federal statute. Local trains, machine shops, station employees, bridge tenders, section men, and by far the vast proportion of railroad employees are hence necessarily subject to State law. Federal legislation must hence be of minor application. Different statutes administered in the same jurisdiction will certainly produce confusion. Uniformity of State law may be desirable, but it can not be compelled by Federal legislation.

A railroad company engaged in both interstate and State business is not within exclusive Federal control, nor can Congress legislate upon any such erroneous assumption. In local business its duties and obligations to passenger or shipper are subject only to State law. An injury to an employee engaged in rendering that service is likewise local and subject also to the State law. The ultimate determinative test of jurisdiction in all such cases must be, Is the business interstate or intrastate? This determinative test is involved in all cases whether affecting the rate, the subject-matter, or the parties concerned—passenger, shipper, or employee.

When property has lawfully begun to move upon its final journey as an article of commerce from one State to another, that moment it becomes the subject of interstate commerce and hence subject only to Federal regulation. (Coe *v.* Errol, 116 U. S., 517.)

And so it has been held that a train of empty freight cars being prepared and taken out of the State for the purpose of transporting coal within the State is not engaged in interstate commerce. (Norfolk, etc., R. Co. *v.* Com., 93 Va., 749.)

And so it is held that a State statute regulating a terminal station wholly within the State operated by a domestic corporation is not void as an interference with interstate commerce. (State *v.* Jacksonville Terminal Co. (Fla.), 27 So. Rep., 225.)

Authorities need not be multiplied. The principle is plain in statement and application. Congress may control the carrier and the shipment when interstate, but not otherwise. When the carrier is performing service within the State in transporting passengers and freight within the State, and when the employees are rendering services in connection therewith within the State, the jurisdiction of State law thereover is just as exclusive as is the power of Congrss over the business when moving "between" the States.

In the exercise of the police power the States may do many things which indirectly affect interstate commerce. They may provide for examination of employees as to fitness for position; license locomotive engineers; regulate stoppage of trains—speed of trains through cities, and regulate transportation of live stock. These are some of the many instances illustrated by the cases of Smith *v.* Alabama, 124 U. S., 465; Nashville, etc., R. Co. *v.* Alabama, 128 U. S., *96; M., K. & T. Ry.* Co. *v.* Haber, 169 U. S., 613; Lake Shore, etc., R. Co. *v.* Ohio,

177 U. S., 285; Gladson *v.* Minnesota, 166 U. S., 427; Crutchett *v.* Kentucky, 141 U. S., 61.

And even a State statute forbidding the carrier to make any contract limiting its common-law liability is held, in Chicago, etc., R. Co. *v.* Solan (169 U. S., 133), not to contravene the Federal power to regulate interstate commerce, the court pertinently observing (p. 137):

"Railroad corporations, like all other corporations and persons doing business within the territorial jurisdiction of a State, are subject to its law. It is in the law of the State that provisions are to be found concerning the rights and duties of common carriers of persons or of goods, and the measures by which injuries resulting from their failure to perform their obligations may be prevented or redressed. Persons traveling on interstate trains are as much entitled, while within a State, to the protection of that State as those who travel on domestic trains. A carrier exercising his calling within a particular State, although engaged in the business of interstate commerce, is answerable, according to the law of the State, for acts of nonfeasance or of misfeasance committed within its limits. If he fails to deliver goods to the proper consignee at the right time and place, or if by negligence in transportation he inflicts injury upon the person of a passenger brought from another State, the right of action for the consequent damage is given by the local law. It is equally within the power of the State to prescribe the safeguards and precautions foreseen to be necessary and proper to prevent by anticipation those wrongs and injuries which, after they have been inflicted, the State has the power to redress and to punish. The rules prescribed for the construction of railroads and for their management and operation, designed to protect persons and property otherwise endangered by their use, are strictly within the scope of the local law. They are not, in themselves, regulations of interstate commerce, although they control in some degree the conduct and the liability of those engaged in such commerce. So long as Congress has not legislated upon the particular subject they are rather to be regarded as legislation in aid of such commerce and as a rightful exercise of the police power of the State to regulate the relative rights and duties of all persons and corporations within its limits.

"Such are the grounds upon which it has been held to be within the power of the State to require the engineers and other persons engaged in the driving or management of all railroad trains passing through the State to submit to an examination by a local board as to their fitness for their positions, or to prescribe the mode of heating passenger cars in such trains. (Smith *v.* Alabama, 124 U. S., 465; Nashville, etc., Railway *v.* Alabama, 128 U. S., 96; New York, New Haven and Hartford Railroad *v.* New York, 165 U. S., 628. See also Western Union Telegraph Company *v.* James, 162 U. S., 650; Hennington *v.* Georgia, 163 U. S., 299; Gladson *v.* Minnesota, 166 U. S., 427.)

"The statute now in question, so far as it concerns liability for injuries happening within the State of Iowa—which is the only matter presented for decision in this case—clearly comes within the same principles. It is in no just sense a regulation of commerce. It does not undertake to impose any tax upon the company, or to restrict the persons or things to be carried, or to regulate the rate of tolls, fares, or freight. Its whole object and effect are to make it more sure that railroad companies shall perform the duty resting upon them by virtue of their employment as common carriers, to use the utmost care and diligence in the transportation of passengers and goods."

Manifestly a freight train composed of cars, some of which are loaded with goods to be transported only within the State, and other cars loaded with goods to be transported out of the State, presents a case of concurrent jurisdiction as well as a condition which may and does frequently happen. The whole train is not thereby devoted to interstate commerce. Under such conditions and in respect of injuries to employees, where would State jurisdiction end and Federal control begin? Is it not easy to see that conflict of jurisdiction, through conflicting statutes, may readily obtain? The coupling or uncoupling of cars loaded with articles to be transported only within the State may cause the employee's injury. Certainly that injury would be the subject of State law and remedy. It is hence plain that to put in operation both State and Federal laws in the same jurisdiction and covering a multitude and variety of cases would not be wise. It is precisely a case where uniformity of State law is desirable, but where such uniformity can not be accomplished solely through Federal legislation.

This subject is concisely and clearly treated in Judson on Interstate Commerce, section 21 et seq., with full citation of authorities.

ADDITIONAL STATEMENT OF H. R. FULLER.

Mr. FULLER. Mr. Chairman, I will first answer what has been said this morning, in view of the fact that it is fresher in our minds. Mr. Newcomb said that it was harder to maintain discipline among railroad men in the United States. I do not know, if that is true, what reason he gives for it. He did not seem to give any. As a rule I think the employees on railroads in the United States believe just as much in discipline and adhere to it as much as those in other countries. Perhaps he speaks upon the ground that in a large number of these other countries which have passed this kind of legislation, and in which there are fewer accidents, the railroads are operated and controlled by the government, and I do not think that he or the road he represents would want government ownership just for the purpose of being better able to control their men.

He said, upon being asked a question, that increased rates meant reduced earnings. Well, I do not catch his line of reasoning. If that is true, without desiring to take sides before this committee one way or the other on the question, I would like to ask why these thousands and thousands of petitions came in here protesting against the passage of the rate bill because it conferred the power on a Government tribunal to regulate railroad rates? It was claimed by the roads that it would cause a reduction in rates, that the tendency wherever those powers have been conferred has been to reduce rates, and that consequently their earnings would be decreased, and their employees would have to suffer in the way of a reduction in wages.

Mr. Newcomb quotes the Interstate Commerce Commission's report to show that accidents have been reduced in number. That is true as to certain things. As a result of automatic couplers there are fewer men being killed and injured by coupling cars. Fewer men are being killed as the result of having grab irons on cars, and there are fewer men being killed as the result of having a standard height of drawbars.

But what is the cause of this? It was said here yesterday that the railroads needed no spur to make them throw safeguards around their employees. I say to you, Mr. Chairman and members of this committee, that our experience has been that the railroads do not only need the spur of legislation to throw safeguards around their employees, but they need in addition to that the whip of enforcement of that legislation. Such is the history of all of that legislation. The same roads that are here to-day protesting against the passage of this legislation were here thirteen years ago protesting against the passage of the safety-appliance law. They said it was not necessary, but Congress thought it was.

Mr. Newcomb failed to say, in quoting the report of the Interstate Commerce Commission, that the cause of this reduction in the number of injuries and deaths was a law of Congress, a law right along the lines of this legislation, a law for the purpose of protecting life and limb, and that is what this legislation means, because that has been its history wherever it has been enacted.

So much, too, for the argument of Congress taking action in regard to this question. Mr. Redfern, who has just spoken, has not contradicted the statement that I made yesterday, that this great benevolent

corporation, the Pennsylvania Railroad, was paying superannuation benefits to its employees out of their own money, yet the reports of these payments as heralded in the papers throughout the country give the railroad company credit for it. He did not dispute the statement that I made that this money that went to pay those benefits came out of the fund that the men themselves had contributed. And I want you to mark his language. He says the money that goes to pay that superannuation benefit is taken out of the "surplus" of the relief fund, which was originally intended to pay for injuries, and so forth.

If there is a surplus in the relief fund—and he has so stated, because he said that they paid money out of it—why the necessity for this great promise to pay that we have heard so much about?

Mr. Chairman, there has been some argument here against this legislation because it meant Federal control. One gentleman has attempted to interpret my language of yesterday as meaning that our object was, in asking this legislation, to take control wholly away from the States. I want to say that my language could not be possibly so interpreted by anyone who watched what I said. I said, in answer to a statement by Representative Brantley, that if Congress passed this law I thought we would follow the same policy as we did with regard to the safety-appliance law, which was that we took it word for word and went to the State legislatures and asked them to enact the same law for the purpose of uniformity. And I believe that this legislation will be an example for the States to follow the same as they are following the safety-appliance law.

As regards States rights, I am a thorough believer in it, and the men I represent believe thoroughly in it. I believe that many of our liberties depend upon States rights. But, as I said yesterday, it was not a theory, but a condition, that confronted us. We see all around us on every other question Congress either taking or trying to take control. Take this matter of rate legislation. I believe you will bear me out when I say that so far as the powers of Congress are concerned, under the grant of the Constitution to regulate interstate commerce, you have gone the limit. There were only six votes in the House of Representatives against it, making practically a unanimous vote. And if I properly interpret the speeches of the men who voted against it, not one of them voted against it because it pretended to put power into the Federal courts—that it proposed to take power away from the State courts. Those who oppose this bill on account of its giving power to the Federal courts are not consistent in their actions on the rate bill. There are many States which have commissions which have the power to fix rates; but that was not thought by Congress to be sufficient. Congress thought it best, in addition to that State legislation, to exercise its own powers. Why can Congress not do the same with regard to the question of liability?

I say it is a poor rule that does not work both ways, and I would be the last man to want legislation here which would take away from the railroad employees in any State anything that they have now got, by law; and I say that if legislation is to be passed here which means to strip them of their protection in their own State, we do not want it.

Mr. PALMER. Are you in favor of the rate bill?

Mr. FULLER. I am not discussing that now. If that were a question properly before the committee. I would be glad to express my views.

Mr. PALMER. I would like to have your views on that.

Mr. FULLER. I think, with all due respect to the gentleman, that his question is a little out of order.

Mr. PALMER. I just want to see where your argument leads to.

Mr. FULLER. Well, I have convictions on that personally, and so have the men I represent——

Mr. PALMER. That is what I was trying to get at—what your convictions are.

Mr. TIRRELL. As a matter of fact, are not the conductors and engineers all opposed to this?

Mr. FULLER. I think my answer to Mr. Palmer is a sufficient answer to that question.

My only object in mentioning the rate question here was because it enabled me to show some of the inconsistencies of men who are opposed to this bill.

The CHAIRMAN. Does your illustration bear out your argument?

Mr. FULLER. I will have to leave that to the committee.

The CHAIRMAN. You say that Congress has legislated and the States have legislated in reference to this rate question. Neither one can regulate in reference to the other's rates—that is, the State can not regulate in reference to the interstate-commerce rates and Congress can not legislate in reference to rates within the States? They are both separate and distinct powers?

Mr. FULLER. Yes, sir; and the same will be true with regard to this question if Congress passes this bill.

The CHAIRMAN. They are both separate and distinct powers, and entirely different from your argument on that?

Mr. FULLER. But I will say this: The Supreme Court has held on different occasions that the State can pass legislation which even affects interstate commerce, and it controls so long as Congress has not acted. But the moment Congress acts, then the law of Congress supersedes the State law.

Mr. PEARRE. Only within the limits of that particular State?

Mr. FULLER. Certainly; only within the limits of that particular State. Now, there is another thing that I can illustrate, I think plainly, on account of the actions of our friends on the other side with reference to other legislation before Congress.

We were told here yesterday by Mr. Bond that they wanted their employees to get all there was in it. Now, we have heard that story before, and we have heard it under different conditions from those under which we heard it here. It has not been very many months since these very fellows who are here opposing this legislation in the interest of the "dear public"—because they say that the public has got to bear the burden eventually—called their employees into their offices and they patted them on the back and said: "Now, here is some legislation that is proposed, and it is dangerous to our interests." The general manager says: "Now, you know I have always been your friend. I believe in good wages." That may be true. He does. He says:

> I believe in good wages for you men, and, by George, I want good wages myself, and if this legislation is passed it simply means this, that I have got to take a reduction in wages, and I am compelled to reduce your wages, something that I do not want to do. There is one thing above all others that we railroad officials want, and that is to look well after our employees, to see *that they get what is right.*

Now, then, on the strength of that statement men have been influenced to do things that these managers wanted them to do. They petitioned Congress against that legislation and tried to prevent its passage, and now they are getting their pay for it in the form of opposition to their employers' liability bill. It was admitted by the representatives of the roads opposing this bill that the public would have to pay the expense, yet they do not want their employees to have the benefit of this legislation. "Consistency, thou art a jewel."

Mr. PEARRE. Was that the opinion of the Brotherhood of Railroad Engineers when they passed their resolution against the rate bill?

Mr. FULLER. I am not saying what particular legislation. I think the men who are opposing this bill know to what legislation I refer.

Every railroad officer who has come before this committee and every officer who went before the Senate committee on this question during the recess was opposed to this legislation, even though they admitted that it benefited their employees. They opposed it because they thought it was unfair to the public; yet they told their employees only a short time ago that they wanted them to have all they could get. Now, I ask them to show their consistency.

Mr. Bond stated yesterday that men were permitted to retain their death insurance in the relief departments after they had left the employ of the railroads. While this may be true as to the Baltimore and Ohio Railroad, it is not true of other companies which he represented. The application for membership in the Pennsylvania Railroad relief department contains this language:

> I also agree that any untrue or fraudulent statement made by me to the medical examiner, or any concealment of facts in this application, or resignation from the service of the said company, or my being relieved from employment and pay therein at the pleasure of the company or its proper officers, shall forfeit my membership in the aforesaid relief fund and all benefits, rights, or equities arising therefrom.

The application of the Philadelphia and Reading relief contains this provision:

> I do hereby further acknowledge, consent, and agree that any untrue or fraudulent statements made by me to the medical examiner, or any concealment of facts in this application, or my resignation from the service of said company, my employer, or from any of the associated companies, or my being relieved from employment and pay therein at the pleasure of the said companies or any of them, or their proper officers, shall, except as otherwise provided in the regulations, forfeit my membership in the said association and all benefits, rights, and equities arising therefrom.

Now, as to the regulations, I read from page 16 of the "Regulations governing the Philadelphia and Reading Relief Association."

> 19. A person's membership in the association shall, except as hereinafter provided, cease as soon as he voluntarily leaves the service of that one or more of the associated companies by which he is employed or is "furloughed," "suspended," "relieved," or "discharged" therefrom. But the transfer of a member from the service of one of the associated companies to another thereof shall not operate so as to determine his membership in the association.
>
> Membership may, however, be retained during absence from such service by reason of "furlough" or "suspension" for a period not longer than nine months under the following conditions:
>
> Membership shall cease unless the member shall return to service or duty at or before the expiration of such period, or upon recovery from disability then existing which shall have commenced during time contributed for in advance.

Mr. PEARRE. Have they any pension system on that road, do you know?

Mr. FULLER. I have not looked into that. I do not think they have. I would not state positively, though.

Mr. PEARRE. The reason I made the inquiry was that the statement was made that the Pennsylvania Railroad had a pension system and a relief department. I just wanted to know whether the Reading has a pension department.

Mr. FULLER. I do not understand that they have. Mr. Bond stated that more than half of the payments from the relief department were for sick benefits or minor accidents. There is no necessity for the railroad company operating a sick-benefit fund for its employees, for they have already sick benefits which they are carrying in their labor organizations, and there are lots of fraternal societies in which they can carry a sick benefit, and they would much rather carry the sick benefit in an organization in which their voice and vote count for something, something which they are denied in the relief department. Mr. Bond also stated that the benefit insurance furnished through the relief department is cheaper than any other to the employee. This is not true, but, on the other hand, it is dearer. It is dearer than the insurance in both the old-line companies and the labor organizations of the employees. And in this connection I wish to call the attention of the committee to an article embodied in the papers I submitted yesterday, prepared by Mr. C. H. Salmons, editor of the Brotherhood of Locomotive Engineers' Journal, which shows a comparison of the different kinds of insurance mentioned and which shows that the relief insurance is the highest of the three.

Mr. Bond also stated, I believe, that the greater number of cases in which benefits were paid from the relief fund were either sick benefits or expenses for accidents for which the men could not recover in the courts. If it is true, as stated by him, that the company would not be legally liable in these cases, why, may I ask, do they require the employee to release them from liability before they will pay him relief benefits in this class of cases? This they do.

Mr. TIRRELL. Did he not state that the accidents were so small in character that the amounts that the lawyers would get would be practically all there was in the cases, so that it was not advisable for them to bring suit, and they would get more out of it by making a settlement if they had no action whatever?

Mr. FULLER. I think that the proper authority to determine how much a man is to get or is entitled to for an injury should rather be the court than the attorney for the railroad which injured him—and many times through gross negligence.

I wish also to call attention to the fact that my claim that the employees contribute over 80 per cent of the money that goes to make up the relief fund stands uncontradicted; and it was not due to any oversight on the part of Mr. Bond that it was uncontradicted, for I asked him the question "What per cent of the money that goes to make up these funds is contributed by the companies?" to which his answer was that he could not say.

Mr. SMITH. I understood Mr. Bond to make the statement that the receipts into that fund there named were about $3,500,000, and that of that sum the railroad companies contributed about $426,000. Now, I understood him to make that statement. I remember the incident of your asking him that question and of his saying he was not able to

answer; but previous to that he had made the statement that I have just recited, as I remember it.

Mr. FULLER. Well, it may be true. I have not looked up those figures.

Mr. SMITH. Those companies would then contribute about 14 per cent.

Mr. FULLER. Fourteen per cent?

Mr. SMITH. Yes, sir.

Mr. FULLER. That is still less than my figures. I thank you for the suggestion. It makes the tail smaller and the dog bigger, but still the tail wags the dog.

Mr. Bond said that the employees were anxious to join these relief departments, and cited as an argument the fact that some men had taken out more insurance in the relief departments than they were required to. The best answer to this is that according to his own statement the roads operating 80 per cent of the mileage in the country do not have these departments, and I believe they would have them if the men would agree to them. Attempts have been made by several of the big roads to force these relief departments upon their employees, and the employees have resented it, and they were not established. Some of the roads then submitted the question to a vote of the employees, and the result was that a very large majority voted against the proposition.

Mr. Bond also stated, if I understood him aright, that the men did not bind their heirs in these contracts. The application for membership in the Chicago, Burlington and Quincy Railroad relief contains this language:

> I also agree, * * * in the event of my death, no part of said death benefit or unpaid disability benefit shall be due or payable unless and until good and sufficient releases shall be delivered to the superintendent of said relief department of all claims against said relief department, as well as against said company, and all other companies associated therewith as aforesaid, arising from or growing out of my death, said releases having been duly executed by all who might legally assert such claim.

The Pennsylvania Railroad relief contract contains this provision:

> And I agree that the acceptance of benefits from the said relief fund for injury or death shall operate as a release of all claims for damages against said company arising from such injury or death which could be made by or through me, and that I or my legal representatives will execute such further instrument as may be necessary formally to evidence such acquittance.

The Baltimore and Ohio relief contract contains this provision:

> I further agree that the bringing of such a suit by me, my beneficiary, or legal representative, or for the use of my beneficiary alone, or with others, or the payment by any of the companies aforesaid of damages for such injury or death recovered in any suit or determined by a compromise or any costs incurred therein shall operate as a release in full to the relief department of all claims by reason of membership therein.

We submit that from a competitive standpoint the roads operating these relief departments have an advantage over those who do not, simply because they do not have to answer in damages for their negligence in full—only 20 per cent or less, about 14 per cent, as compared to what other roads do.

The tendency now is, as expressed in the rate bill, to prevent discriminations and put all interests on an equal footing. Why not continue that policy with regard to this question?

Mr. Chairman and gentlemen, a general manager of a railroad—I do not care about mentioning his name—told me that his road was at a disadvantage on account of these relief associations. He said, "We have got to go into the courts and answer for every man that is injured, which the courts hold us liable for, and the companies who operate relief departments do not have to do that, and we are at a disadvantage." This is plain to every man, without testimony from a railroad official.

Mr. Harris spoke of the "ambulance chasers," meaning lawyers who prosecute damage suits against railroads. I do not think lawyers need any defense. They are generally able to defend themselves, but I believe these lawyers that they have termed "ambulance chasers" compare favorably with that class of men and agents whom the companies send to the sick bed of the injured employee to get from him a contract of release before he has fully recovered from the effect of the anæsthetic that was administered to permit of an operation to in part repair the damage they have done him through their gross negligence. And they compare favorably with the fellow who chases the poor widow whose tears are not yet dry for the purpose of securing a release from liability for the gross negligence which took from her and her family their only means of support.

They say that this is class legislation, because it only applies to railroads. In the consideration of this question Congress is limited in its power to interstate commerce, and it therefore can not legislate as to other classes of employment. But, Mr. Chairman, this is the old story repeated. It is like the story of the Arkansas traveler. The opponents of this legislation are either opposing it because it is not broad enough or because it is too broad. If you made it broader and tried to extend it to other conditions of employment, they would undoubtedly raise a constitutional point on you and say that it was too broad. So it does not matter what kind of legislation we want we always meet the argument that it is either too broad or too narrow.

And as to the constitutionality of this bill there can be no doubt. Congress has already legislated with regard to the safety of employees on railroads, because of the fact that they were engaged in moving interstate commerce, and in that law, Mr. Chairman, Congress abolished, in words as plain as could be expressed in the English language, the doctrine of assumption of risk when the company violated the provisions of that law. The constitutionality of that provision has, I believe, only been raised once. That was in K. C., M. and B. R. Co. *v.* Flippo (35 Am. and Eng. R. R. Cases (N. C.), 486), and the supreme court of Alabama held it to be valid.

Cases in which that provision was involved have been brought before the Supreme Court of the United States and adjudicated, and with the one exception already cited there has never been a railroad lawyer who has raised the point of unconstitutionality against it. As to the unconstitutionality of the law because it reads that it shall apply to the carrier because it is engaged in interstate commerce, we have two precedents to go by. The national arbitration law of 1898 applies to the carrier engaged in interstate commerce, and the amendment to the safety-appliance law of 1903 applies in specific terms to the common carrier which is engaged in interstate commerce.

It is too late to now raise the question that an injury to an employee on a railroad, simply because it is engaged in interstate commerce, can

not be properly termed "regulation," within the meaning of the Constitution. Congress has already legislated on that question. The national safety-appliance law makes the railroad liable for injuries to employees. The very title of that law reads: "An act to promote the safety of employees * * * upon railroads." As construed by the Supreme Court in the Johnson case, the purpose of that act was to "promote the safety" of the lives and limbs of employees; and this is one of the purposes of House bill No. 239. Indeed, it could be appropriately entitled "A bill to promote the safety of employees on railroads."

Article I, section 8, of the Constitution provides that—

> The Congress shall have the power * * * to regulate commerce with foreign nations and among the several States.

The same section provides that—

> Congress shall have the power to make all laws which shall be necessary for carrying into execution these powers.

In Gibbons *v.* Ogden (9 Wheat., 1), Chief Justice Marshall, in speaking of this power, said:

> This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.

We contend that Congress has just as much authority to legislate on this question, so far as it applies to a railroad engaged in interstate commerce, as has one of the States the authority to make an intrastate railroad liable to its employees. In the opinion above quoted Chief Justice Marshall said:

> If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.

In his concurring opinion in the case above cited, Mr. Justice Johnson stated:

> * * * It follows that the power must be exclusive; it can reside but in one potentate, and hence the grant of this power carries with it the whole subject, leaving nothing for the State to act upon. * * * The subject, the vehicle, the agent, and their various operations become the base of commercial regulation.

Is not the employee one of the agents through which interstate commerce is transported?

If Congress can legislate as to seamen, their conditions of employment, and the like, because they are engaged in interstate or foreign commerce—and it will not be denied that it has so legislated—why can it not legislate as to railroad employees who are engaged in the transportation of interstate commerce? In the case of Gibbons *v.* Ogden, above quoted, Justice Johnson said:

> Shipbuilding, the carrying trade, and propagation of seamen are such vital agents of commercial prosperity that the nation which could not legislate over these subjects would not possess power to regulate commerce.

In the Civil Rights cases (109 U. S., 3, 18) the Supreme Court said that in the regulation of commerce among the States—

> Congress has the power to pass laws for regulating the subjects specified in every detail, and the conduct and transactions of individuals in respect thereto.

In Railroad Company *v.* Baugh (149 U. S., 368) the Supreme Court said:

> The lines of this very plaintiff in error extend into half a dozen or more States, and its trains are largely employed in interstate commerce. As it passes from State to State, must the rights, obligations, and duties subsisting between it and its employees change at every State line? If to a train running from Baltimore to Chicago it should, within the limits of the State of Ohio attach a car for a distance only within that State, ought the law controlling the relation of a brakeman on that car to the company to be different from that subsisting between the brakeman on the through cars and the company? * * * It is obvious that the relations between the company and employee are not in any sense of the term local in character, but one of a general nature.

In the case of In re Rahrer (140 U. S., 545, 562) we find this expression:

> The framers of the Constitution never intended that the legislative power of the nation should find itself incapable of disposing of a subject-matter specifically submitted to its charge.

The general principles applicable to the subject were laid down in the great case of McCulloch *v.* Maryland (4 Wheat., 316, 421, 423) These are:

> The sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate; let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end which are not prohibited, but consistent with the letter and spirit of the Constitution, * * * where the law is not prohibitive and is really calculated to effect any of the objects intrusted to the Government, to undertake to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground. This court disclaims all pretentions to such a power.

In the case of Reid *v.* Colorado (187 U. S., 137, 153) the Chief Justice, delivering the opinion of the court, said:

> The principle is universal that legislation, whether by Congress or by a State, must be taken to be valid, unless the contrary is made clearly to appear.

Mr. Bond stated, and it has also been stated here this morning that to permit employees to recover when they were guilty of negligence would encourage carelessness among them—and they take particular pains not to quote the language of this bill—and I wonder that lawyers would attempt to make a committee of lawyers believe that this bill entirely abolishes the doctrine of contributory negligence.

The doctrine is there just as firmly as it ever was. But this rule according to our amendment, and even without it, meant that the employer who was guilty of gross negligence should no longer go scot-free, under the rule. This provision, Mr. Chairman, simply says that if the employee is guilty of only slight negligence—and not only that, it does not stop there, but the employer has got to be guilty of gross negligence—he may recover. There is no better argument for the passage of this bill, as we have proposed to amend it, than the very argument that they submit here. If permitting an employee to recover if he is guilty of slight negligence, although holding him to a strict accountability for that negligence, which this bill does—if that, in that mild form, will encourage negligence, I ask *them why would* not a law like the rule of to-day, which frees the

employer from gross negligence, encourage him in his gross negligence; and I repeat what I said yesterday, that to society, the man who is guilty of gross negligence is the worst man of the two.

All that we ask is that the employer shall respond to the extent of his gross negligence, and we are willing to answer for our slight negligence.

Mr. PALMER. Now, you have been a practical railroad man, as I understand it, and you understand this question. Do you know of any railroad company that does not exercise the utmost possible care to take care of their passengers and property?

Mr. FULLER. I say that there is a great deal more care taken to protect passengers; and I believe that the very reason, or one of the great controlling reasons, for that great precaution is the fact that the company has not only got to answer for gross negligence if it injures them, but even for slight negligence.

Mr. PALMER. Please just answer the question that I asked you.

Mr. FULLER. I am endeavoring to do so.

Mr. PALMER. Where is the company? What company?

Mr. FULLER. I was coming to that. I say to you, if you please, take the reports of the Interstate Commerce Commission, which are based upon the reports of its inspectors that go all over this country and inspect the equipment of these railroads, and they will show you that so far as passenger cars are concerned, the percentage of defects is, I believe, about 5 per cent, while, on the other hand, in the freight equipment, with which the employees have got to work, and to whom under the present rule they have not to answer in damages, some 20 or 30 per cent of the cars are defective. A man gets on a sleeping car. The company sees to it that the train which carries that human freight, for which it is responsible, is taken over the road in compliance with the laws of Congress. Every air-brake car in that train is kept up as good as it possibly can be, and it is operated and that train is controlled, in accordance with the law, by the engineer, with his air brakes, from the valve in the cab; while on the other hand, the freight trains to-day, notwithstanding the fact that Congress says they shall be controlled by the engineer, are being controlled down the grades of this country by hand brakes, and men are being knocked off the trains and killed as a result of it. And I want to say to you that there are no more flagrant violators of that provision and other provisions of the safety-appliance law than the companies which were represented here yesterday by Mr. Bond, especially the Pennsylvania Railroad and the Baltimore and Ohio Railroad.

Mr. Chairman, if the reports of the safety-appliance inspectors of the Interstate Commerce Commission were consulted, you would find that these particular roads are the worst violators of the law, and I do not know of an instance wherein the Pennsylvania Railroad has ever been prosecuted for one of those violations. The Pennsylvania Railroad does not only need legislation for the protection of both passengers and employees on its lines, but it also needs enforcement of that legislation. Take the great accident that happened at Harrisburg on the 11th of last May, in which over 100 were killed and injured. I say to you as a practical railroad man that if the Pennsylvania Railroad had operated every air-brake car they had in that train that loss of life and limb would have been prevented. But they did not. And yet they say they do not need any spur of the law!

Mr. Chairman, until Congress said they should put air brakes on these cars and control the speed of trains by them they would not do it; and it is one of the hardest fights we ever had now to get them to do it after the law is in effect—and they will not do it.

Mr. HENRY. Why are they not prosecuted?

Mr. FULLER. That is something I have not been able to find out.

Mr. HENRY. Whose duty is it? Does the Attorney-General refuse to direct that prosecution?

Mr. FULLER. I do not know that he does.

Mr. HENRY. Have you called his attention to these matters?

Mr. FULLER. I say this: That the Interstate Commerce Commission is clothed with the authority, and money is being appropriated every year to employ inspectors to go over the country and report violations of this law, and I know that there have been repeated violations by the Pennsylvania Railroad reported to the Commission. I presented to the House Committee on Interstate and Foreign Commerce two or three years ago copies of bulletins over the signatures of the officials of these two roads, in which they instructed the men to control the speed of those trains by hand, years after Congress had said that they should be controlled by the air brakes.

Mr. PEARRE. Could not one of these inspectors go to a United States commissioner, or could not any individual do that, and swear out warrant before a United States commissioner?

Mr. FULLER. I want to say this in answer to that question, so that you will understand it thoroughly.

Mr. PEARRE. Yes.

Mr. FULLER. The law says that the United States district attorney shall, upon receipt of evidence of a violation of this law, bring suit in the district in which the violation occurs. The law also says that it shall be the duty of the Interstate Commerce Commission to file all evidence of violations that may come to its notice with the various district attorneys, and the district attorney in the district is required to bring suit.

Mr. HENRY. You mean to bring suits or to institute prosecutions?

Mr. FULLER. To institute prosecutions under the law.

Mr. HENRY. I wanted to be sure just what you meant about that. What is the penalty under that law?

Mr. FULLER. One hundred dollars fine in each instance.

Mr. PEARRE. Then the United States attorneys have failed in the duty in not calling the attention of the United States grand juries in the different districts to these violations?

Mr. FULLER. There is somebody to blame; and these roads, especially the Pennsylvania Railroad, seem to be immune from the law of Congress with regard to safety appliances.

Mr. GILLETT. Have not lots of suits been commenced in such case to recover this $100, and have not those suits been successful?

Mr. FULLER. Yes; but I do not know of any against the Pennsylvania Railroad, yet it is one of the worst violators of the law.

Mr. GILLETT. I know there have been suits in various parts of the country where they have failed to use cars properly equipped with the safety appliances.

Mr. FULLER. Yes, sir; and there is no better evidence than that that it needs a law to make them throw safeguards around their em*ployees.*

Mr. GILLETT. Can the Government institute a suit?

Mr. FULLER. Yes, sir.

Mr. PARKER. Can an informer institute a suit?

Mr. FULLER. How is that?

Mr. PARKER. Can a man bring a suit as an informer and get half of the penalty?

Mr. FULLER. No, sir; I do not think so. The law says that the district attorney shall prosecute on evidence submitted to him, if in his judgment, of course, it is proper. It does not matter who submits it.

Mr. PALMER. What is the good of having inspectors if there is no report of the inspector or prosecution of anybody?

Mr. FULLER. There are lots of them; but I say that these roads, especially the Pennsylvania Railroad, seem to be immune.

Mr. PALMER. Now, I am only asking this for information. Has not the Pennsylvania Railroad put the system of air brakes or safety appliances into operation on all their trains?

Mr. FULLER. No, sir; they are not complying with the law.

Mr. PALMER. Can you name a case anywhere where the Pennsylvania Railroad is running a freight train or a passenger train that has not safety appliances on it?

Mr. FULLER. I can not say that I can name any particular train which they are running without safety appliances. I might answer the question were it put in this way: Do I know of any place on that road where they are not complying with the law in regard to safety appliances?

Mr. PALMER. On that there would be a difference of opinion. You might think they are not complying with the law, and they might think they are complying with the law.

Mr. FULLER. The law says this, that they shall have a sufficient number of air brakes in a train to enable the engineer to control its speed from the locomotive without the use of hand brakes.

Mr. PEARRE. Has it not been amended since then?

Mr. FULLER. Then it follows that up by saying in an amendment that there shall be at least 50 per cent of the cars in that train equipped with air brakes and operated. But even with or without the 50 per cent provision in there, the duty upon the carrier is to control the speed of that train by air brakes. Now, as to whether they are violating the law or not, I have stated the law in effect to you. Here are the facts. I have letters which I have received within the last week stating that at different points along the Pennsylvania Railroad the men are required to-day to control the speed of trains by hand. It can not be said that it is an impossibility to control them by air brakes, because, as I have already said, the large passenger trains they take down those mountains are controlled by air brakes, and if these other trains were loaded with freight that they were responsible for—human freight that if they injured they were required to make compensation to—those trains would be so controlled.

Mr. PALMER. They have higher responsibility to the dead freight than the live freight, because they are insurers of the dead freight; so that there is nothing in that proposition.

Mr. PEARRE. They come pretty near being insurers of the live freight.

Mr. PALMER. The care which is exercised for the passengers goes to the benefit of the employees, does it not?

Mr. FULLER. Oh, yes; to the employees on passenger trains.

Mr. PALMER. The brakeman and the conductor and the baggage master and the engineer and the fireman—they are all just as well protected as the passengers are by any regulations as to protection that the company makes on that subject?

Mr. FULLER. Yes, sir; as to air brakes.

Mr. PALMER. My observation has been that railroad companies do not want accidents. They are very expensive. An accident that kills an employee may cost the company $50,000 in the destruction of property, and they are as anxious to avoid accidents as they possibly can be.

Mr. FULLER. In answer to that first question I would say that it is true that employees on these passenger trains which are controlled down those mountains by air brakes get the benefit of that safety; but they are so few in number that they are merely a drop in the bucket compared with the number of employees employed by that company. Well, they are a little more than a drop in the bucket.

Mr. PALMER. You say you have letters from the employees of the Pennsylvania Railroad saying that they use hand brakes yet. But that does not answer the proposition that there is no train on the Pennsylvania Railroad or on any of these systems, from beginning to end, on which they have not these safety appliances. There may be an occasion where a brakeman would have to use a hand brake, but do you undertake to say that habitually there is any train running on which there is no air brake?

Mr. FULLER. I want to emphasize the statement that it is a regular practice to handle those freight trains down those hills by hand brakes, and that the men are instructed in writing to so do.

Now, it is true that they have some safety appliances on these trains, but what does that avail the employees unless they are put in use?

Mr. PALMER. They have 50 per cent, that the law requires, of air brakes.

Mr. FULLER. But the law says that the brakes shall be operated, and that the speed of the train shall be controlled from the locomotive, and it does not make any difference how many air brakes they have if they do not control the speed of the train from the engine. It is a violation of the law.

Mr. PALMER. I understand you now. I did not understand you before. They ought to so control the train, whether it takes one air brake or two, or every car in the train?

Mr. SMITH. As a practical question, can they control the train on 50 per cent of whose cars they have these appliances?

Mr. FULLER. It depends upon the grade.

Mr. SMITH. It depends upon the grade?

Mr. FULLER. Yes, sir; but every car should be equipped and operated. Excuse me just a moment. I said that if the Pennsylvania Railroad had operated all the air-brake cars that it had in that freight train at Harrisburg which buckled, which in effect was elbowed out like that [indicating] onto another track where the passenger train ran into it, that accident would not have happened, and for this reason: They said they had half of the cars in the train

equipped with air brakes and operated, but there were more air brakes, so I understand, and they did not operate them.

Mr. GILLETT. Whose duty is it to place these air brakes in a condition so that they can be operated when the train is made up?

Mr. FULLER. The men are supposed to do it if the companies want it done.

Mr. GILLETT. But whose duty is it to do it?

Mr. FULLER. It is the duty of the men to do it, but if it is the policy of the company to not want it done, the men do not do it.

Mr. GILLETT. If the men did not put those appliances in a condition so that they could be used, and then ran that train, whose fault was it?

Mr. FULLER. The air brakes are put into position to be operated in this way, according to the rules of the company. If the company says that only 25 per cent shall be operated, the men only put 25 per cent ahead, because if they lose time in switching out 50 per cent they are disciplined. If the company says 50 per cent, they put 50 per cent ahead, and if under these conditions 75 per cent of the cars in the train are equipped with air brakes, but not operated, the men are not to blame, because they are not instructed to switch all of the air-brake cars ahead where they can be used.

Now, I want to say this, that the Pennsylvania Railroad, as I am informed on reliable authority, before that wreck at Harrisburg, had kept their air-brake instruction car out of use for a long time. That air-brake instruction car stood at Altoona for a long period without being used, and the men on the road were not familiar with the use of the air brake, simply because they had not been schooled in it by the company. It requires some schooling for a man to learn it. The theory of it is simple when a man once gets it into his head, but he should have instructions from a man who knows about it.

Immediately after that wreck happened they issued instructions to use 65 per cent of air, so the papers say, and the papers say it was because of that accident that they wanted more air. They started then to establishing air-brake schools to instruct their men in the use of the air brakes, when they should have started to do that long before the law took effect, because Congress, when it passed the law, provided that the air-brake provision should not go into effect for five years, and they had plenty of time to do that with the employees in their service, and it is proper that when a man comes into the service they should teach him how to handle this air. According to the newspaper reports, a large percentage of the classes of men that they took into these air-brake schools after that accident could not pass the examination. And I say to you that it is not a hard examination to pass when a man has had some one to teach him.

Mr. PALMER. Who are the men who are instructed—the engineers?

Mr. FULLER. A company which does the thing properly sends some of its subordinate officers to the Westinghouse or some other air-brake plant for instructions. They go there and get schooled in the air-brake system, and then they come back and instruct the employees.

Mr. PALMER. Do they instruct the engineers or the brakemen, or both?

Mr. FULLER. All of them. They all have to handle the air. I will be glad to give the committee some newspaper clippings which bear out my statement with regard to the Harrisburg wreck.

[Pittsburg Gazette, May 30, 1905.]

APPLYING MORE AIR.

An order has been made by the Pennsylvania Railroad increasing the cars that must be under control of air brakes from 50 to 60 per cent. The purpose is to avoid, if possible, the "buckling" of trains that has caused recent serious accidents.

[Editorial—Harrisburg Telegraph, June 5, 1905.]

AIR BRAKES ON FREIGHT CARS.

With its usual promptness the Pennsylvania Railroad is taking precautions to prevent wrecks due to the "buckling" of freight trains. It will not have been forgotten that the dreadful wreck in South Harrisburg was caused by "buckling."

[Pittsburg Post, June 14, 1905.]

PENNSYLVANIA RAILROAD WATCHES AIR HOSE.

One of the results of the Pennsylvania Railroad management to test the use of air brakes appears in an order for conductors to report all cases of bursting air hose and to give data with these reports. General Superintendent of Motive Power Trump and other officials have been following up the matter of air brakes and hose and possible buckling and other accidents since the Harrisburg wreck, and it was announced that the use of the brakes would be investigated carefully.

[Pittsburg Post, June 21, 1905.]

RULES FOR EXPLOSIVES—PENNSYLVANIA RAILROAD ISSUES IMPORTANT REGULATIONS GOVERNING TRANSPORTATION.

Copies were received in Pittsburg yesterday of the rules which have just been issued by the Pennsylvania Railroad governing the transportation of explosives. These rules are signed by Michael Trump, general superintendent of transportation, and are effective immediately Superintendent Trump and other transportation officers have held several conferences since the Harrisburg accident, for the purpose of formulating more strict rules for carrying explosives.

The regulations provide that explosives shall be carried only on through fast freight trains composed of not less than 30 cars and having 67 per cent of the air brakes connected.

[Greensburg (Pa.) Tribune-Herald, August 1, 1905.]

PENNSY FREIGHT CARS WILL BE EQUIPPED WITH AIR BRAKES THERE.

Since the awful railroad accident at Harrisburg a few weeks ago, in which many people met most horrible deaths, the Pennsylvania Railroad Company has decided to take the necessary precaution to prevent a repetition of this awful horror by equipping all their freight cars with air brakes.

[Pittsburg Post, June 28, 1905.]

MORE AIR-BRAKE REGULATION.

Over the signature of Superintendent Bonebrake, of the Pittsburg division, southwest system of the Pennsylvania lines West, freight trainmen have been instructed not only to connect 50 per cent of the air brakes with the locomotive, but also to connect all other cars in positions, unless there is some defect in the brakes. Exhaustive tests of the use of air brakes were made on the Panhandle a few weeks ago, and the strict regulations resulted from these. The Pennsylvania lines, both East and West, are giving the matter of air brakes much attention at present.

MORE AIR-BRAKE TESTS.

[Pittsburg Post, August 8, 1905.]

Another series of tests of the use of air brakes on freight trains will be started this morning at Scully yard, on the Pittsburg division of the Panhandle, by Superintendent M. Dunn, of the motive power department of the Southwest system, Pennsylvania lines west of Pittsburg. This is the second time since the accident at Harrisburg, due to the present practice in the use of air brakes, that tests of the use of the brakes will have been made at Scully yard.

[Pittsburg Post, June 15, 1905.]

Enginemen and trainmen of the middle and Philadelphia divisions of the Pennsylvania Railroad are getting air-brake instruction.

NEED AIR-BRAKE INSTRUCTION.

[Pittsburg Post, June 18, 1905.]

That the air-brake instruction car of the Pennsylvania Railroad is supplying a much-needed advantage to the railroad's employees is shown by the results of examinations conducted during the past week at Harrisburg. Of the five classes of engineers and firemen of the Philadelphia division who have been examined regarding the workings of the air brakes at the air-brake car during the past few days, not one of the men has successfully passed the examination. The air brakes are one of the most vital parts of railroading, and the men must have an average of 85 per cent to continue railroading. William College, the instructor, assisted by Traveling Engineer William H. Whitman, is putting the men through a test, and it has already been shown that the men need further training in this line.

[Pittsburg Post, June 21, 1905.]

The Pennsylvania Railroad is fitting up rooms for air-brake instruction at Harrisburg and other points.

Mr. PEARRE. Will it interrupt you now to answer a question in regard to the State taking charge of these matters to a certain extent?

Mr. FULLER. No, sir.

Mr. PEARRE. Have you fully examined the employers and employees' liability act of the State of Maryland, passed by Maryland in 1902?

Mr. FULLER. I looked over that some time ago.

Mr. PEARRE. There is no insurance provision in that. Do you recall the act at all?

Mr. FULLER. Yes, sir; I do.

Mr. PEARRE. And the insurance feature that is in it and the relieving of the theory of contributory negligence to a certain extent?

Mr. FULLER. Yes, sir; I quoted that yesterday in my statement.

Mr. PEARRE. Under which there is one-half of the liability imposed upon the company?

Mr. FULLER. Yes, sir; it says if the accident was caused by the negligence of an employee and the employer jointly, then the employer shall stand half.

Mr. PEARRE. That act met your approval, I understand?

Mr. FULLER. I simply submitted that in the way of argument. I could not say that act meets our approval. Our views of legislation are expressed in House bill 239. I simply cited that to show——

Mr. PEARRE. As a State law it met your approval?

Mr. FULLER. I simply cited it in my argument to show how far the States had gone on this question.

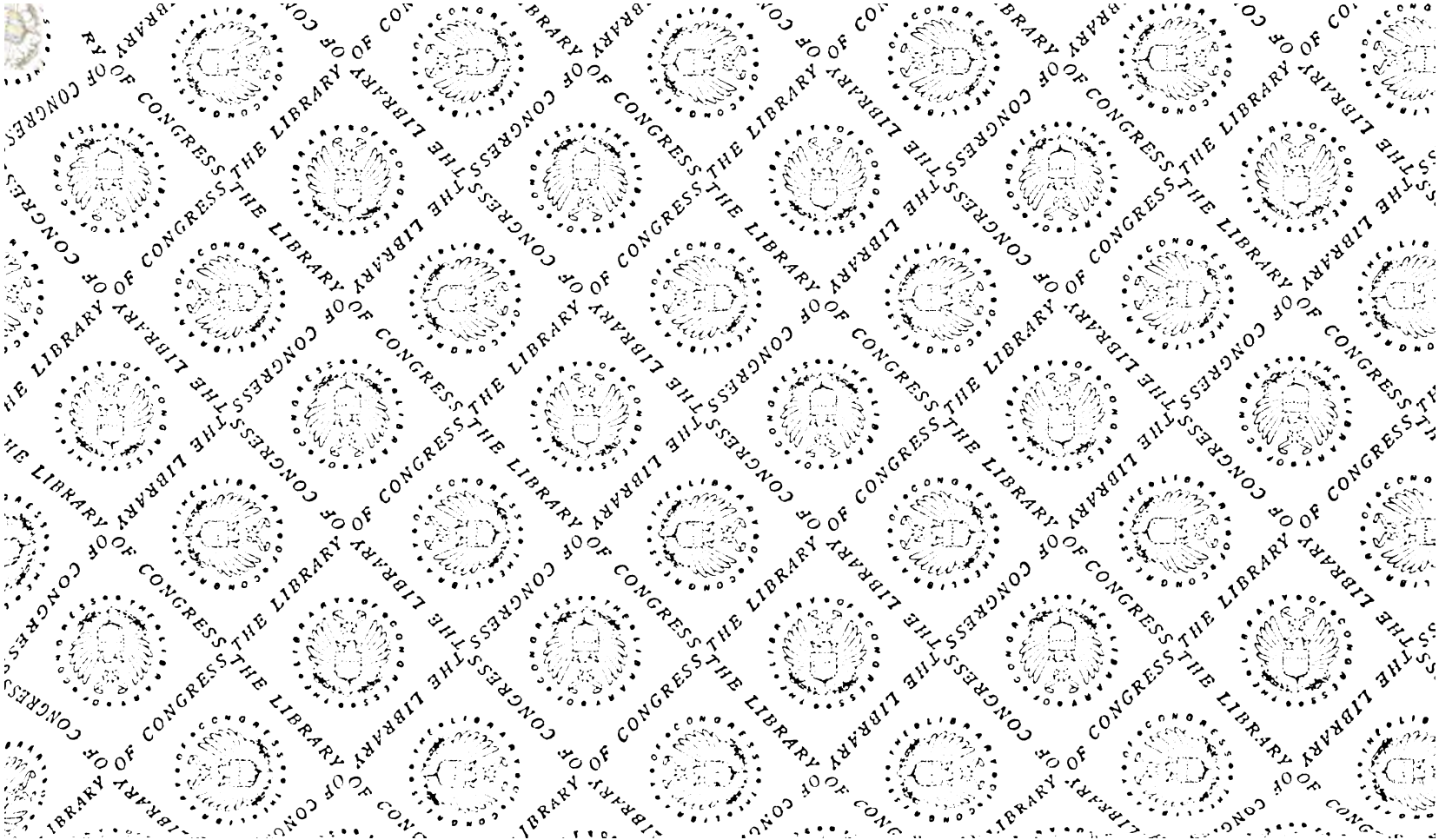
Mr. Harris said that for Congress to legislate upon this question would cause great confusion in the courts. I want to ask if it is not the business of the courts to settle contests and confusion? That is their very function. And while they are adjudicating cases which come under this law they are doing nothing else, and we think the railroad employees are as much entitled to the time of the courts as is any other class of citizens. The employers have not hesitated to occupy the time of the Federal courts in handling labor-injunction cases.

Mr. Bond made a statement here yesterday, and there can be no greater evidence than it for the passage of this legislation. He said that on a railroad—I can not just give his words—the operation of the railroad was always a contest between man and the forces of steam, and that it was an impossibility for railroad men to keep from getting injured. Now, if that is true, and I think it is, it seems to me that it entitles our case to consideration at the hands of Congress. It matters not who this expense comes upon. I think myself that it will eventually come upon the public. I think, though, the fact that the employer is to be made the paymaster will make him feel that he is obligated to throw greater safeguards about his employees. That is the natural consequence, because it is the fellow that goes down in his pocket and meets the expenses that feels he has got to pay for it, but eventually these expenses can be absorbed and taken in by the general public.

Of course, our friends on the other side say that they do not want the public to stand that; that it is not right. Now, inasmuch as the members of this committee and the members of Congress are representing the public, I ask you this question: Who is better able to carry this burden, the men who get the benefit of the transportation over these highways of the Republic of their commerce by men who are daily giving up their lives and limbs to transport it or the employees? Who is better able to stand it? There is probably sentiment in connection with this question, but I want to say to you that as to the employee there can be no colder a proposition of real business than this. Every lawyer who sits around this table knows that his profession is his trade. The trade of a railroad employee is service upon a railroad, and if he is injured he can not pursue that trade. His trade is gone.

Now, that is followed by this: While men on railroads are required to have a certain amount of education, the ordinary railroad man, if he is disabled from employment, is not fit to go into an office and run it like men who have had the benefit of better education. He is deprived of employment from that source, and it is plain upon the face of it that a man with an armless sleeve or wooden leg can not perform manual labor. I say to you it is a matter of cold business along with sentiment, and we have no apologies to make for the sentiment that is in it. I thank the committee for its attention.

(At 12.10 o'clock p. m. the committee went into executive session.)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